

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

JOHN J. CRUZ,  
*Plaintiff-Appellee,*

v.

CITY OF SPOKANE;  
WASHINGTON STATE CRIMINAL  
JUSTICE TRAINING  
COMMISSION, a state commission;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; ART  
DOLLARD, Police Officer at the  
Spokane Police Department and TAC  
Officer at the Washington State  
Criminal Justice Training Commission  
Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the  
Spokane Police Department and TAC  
Officer at the Washington State

No. 21-35912

D.C. No. 2:20-  
cv-00250-SAB

ORDER  
CERTIFYING  
QUESTION TO  
THE  
WASHINGTON  
SUPREME  
COURT

Criminal Justice Training Commission  
Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the  
Spokane Police Department and TAC  
Officer at the Washington State  
Criminal Justice Training Commission  
Basic Law Enforcement Academy;  
SUE RAHR, Executive Director of the  
Washington State Criminal Justice  
Training Commission;

*Defendants-Appellants,*

and

FERRY COUNTY; CITY OF  
REPUBLIC, a municipal corporation;  
RAY MAYCUMBER, Ferry County  
Sheriff; AMY ROOKER, Ferry  
County Chief Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at the  
Ferry County Sheriff's Office,

*Defendants.*

Filed April 28, 2023

Before: Jacqueline H. Nguyen and Andrew D. Hurwitz,  
Circuit Judges, and Dean D. Pregerson,\* District Judge.

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\* The Honorable Dean D. Pregerson, United States District Judge for the  
Central District of California, sitting by designation.

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## SUMMARY\*\*

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### Civil Rights/Washington Law

In an action alleging, in part, wrongful discharge, the panel certified the following question to the Washington Supreme Court:

What is the scope of immunity provided by RCW 43.101.390? Specifically, does the provision grant immunity for intentional torts committed in the course of administering the Basic Law Enforcement Academy?

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### COUNSEL

Heidi S. Holland (argued) and Taylor Hennessey, Assistant Attorneys General; Robert W. Ferguson, Attorney General of Washington; Office of the Washington Attorney General; Spokane, Washington; for Defendants-Appellants.

Nathan J. Arnold (argued) and Emanuel F. Jacobowitz, Arnold & Jacobowitz PLLC, Redmond, Washington, for Plaintiff-Appellee.

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

## ORDER

The Washington State Criminal Justice Training Commission (“CJTC”), the City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, and Todd Belitz (collectively, the “CJTC Defendants”) moved for summary judgment in the district court on John Cruz’s state law claims, asserting that they are entitled to statutory immunity under Wash. Rev. Code (“RCW”) 43.101.390(1). The district court denied summary judgment, and the CJTC Defendants appealed. Whether summary judgment is warranted turns on an unresolved and important issue of Washington law—the scope of immunity provided by RCW 43.101.390. Specifically, (a) does the provision grant immunity for even intentional torts, and (b) can acts committed with unlawful intent qualify as “official acts performed in the course of . . . duties”? RCW 43.101.390(1). We respectfully ask the Washington Supreme Court to exercise its discretion to decide the certified question set forth below.

### I. Factual Background

Cruz began working as a police officer for the City of Republic, Washington, on September 1, 2016. He identifies as Hispanic and alleges that his colleagues and supervisors, including Deputy Austin Hershaw, frequently subjected him to racist remarks.<sup>1</sup>

In January 2017, Cruz allegedly heard from a Ferry County dispatcher that Hershaw engaged in sexual activity

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<sup>1</sup> Because the CJTC Defendants filed their motion for partial summary judgment before the completion of discovery, many of their arguments were based on factual allegations in the operative pleading.



with a woman named Randi Torchesky in the back of his patrol car while on duty and in uniform in July 2016. Cruz alleges that he reported this misconduct to Detective Rainer, Hershaw's close friend. Both Hershaw and Torchesky denied the incident, and the sheriff referred the investigation to the Washington State Patrol. Cruz alleges that Hershaw "was furious" at him for reporting the alleged sexual misconduct.

Later in January 2017, shortly before Cruz began mandatory training at the Basic Law Enforcement Academy (the "Academy"), Hershaw allegedly visited the Academy to pick up targets for a firearms training. Cruz believes that, during this visit, Hershaw complained to Assistant Commander John Everly and Officer Art Dollard about Cruz's "false allegations" against him and asked them to treat Cruz harshly in retaliation. Cruz states that Rainer also contacted staff and instructors at the Academy requesting that they treat Cruz harshly.

Cruz alleges that after he arrived at the Academy in February 2017, Dollard and Everly consistently subjected him to unfair treatment. For example, they allegedly:

- falsely accused him of lying on multiple occasions;
- assaulted him with pepper spray in the guise of training—by spraying him more harshly than other cadets—when administering the pepper spray certification exercise;
- cited him for issues that were not raised against other similarly situated cadets, including some conduct that violated no Academy rules;
- attempted to publicly embarrass him regarding his personal affairs; and

- deliberately separated him from another Hispanic recruit with whom he spoke Spanish and had developed a close friendship.

During training, Cruz's young daughter and his long-term girlfriend occasionally stayed with him overnight, including on some weekdays, a practice he claims was allowed for other current and former cadets. In May 2017, three weeks before graduation, Everly questioned Cruz about his daughter's overnight stays. Cruz alleges that he had Officer David Daddatto's permission, but Daddatto did not recall any specific conversations with Cruz about overnight guests. Daddatto had apparently informed other cadets that guests were only permitted on weekends. Cruz alleges that he was never informed that weekday stays were not permitted, and, in any event, such stays violated no rule or policy. Nonetheless, Everly concluded that Cruz had lied about receiving permission to host guests and thus dismissed Cruz for violating the Academy's integrity policy. Cruz appealed his dismissal in June 2017. Sue Rahr, the CJTC's Executive Director, denied the appeal, and Cruz was terminated from employment as a police officer.

Cruz filed a complaint in state court on May 5, 2020, alleging ten causes of action based on race discrimination and retaliation for reporting Hershaw's alleged sexual misconduct. The following state law claims are at issue on appeal: (1) wrongful discharge in violation of public policy; (2) wrongful termination in violation of public policy, RCW 42.41.010; (3) violation of the Washington Law Against Discrimination ("WLAD") regarding retaliation against a whistleblower, RCW 49.60.210; (4) intentional infliction of emotional distress; (5) intentional interference with a business relationship; and (6) violation of the WLAD based

on racial discrimination, RCW 49.60.180. The CJTC Defendants removed the case to federal court.

The CJTC and its staff, as well as the City of Spokane, which employed the defendant officers assigned CJTC responsibilities, moved for partial summary judgment as to the state law claims before the parties completed written discovery and depositions. The CJTC Defendants contend that they are entitled to statutory immunity as a matter of law under RCW 43.101.390(1), which provides:

The commission and individuals acting on behalf of the commission are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

The district court concluded that the CJTC Defendants are not “automatically immunized” from suit under RCW 43.101.390 and that further discovery was warranted to determine whether they acted with discriminatory or retaliatory intent or exceeded the scope of their duties. Accordingly, the district court denied the motion without prejudice to renewal after discovery.

## **II. Explanation of Certification**

Washington law permits certification from a federal court when, in the opinion of the court, “it is necessary to ascertain the local law of [Washington] in order to dispose of such a proceeding and the local law has not been clearly determined.” Wash. Rev. Code 2.60.020.

Here, the parties dispute whether RCW 43.101.390 immunizes the CJTC Defendants from liability. The CJTC Defendants argue that they enjoy absolute immunity because the alleged conduct occurred during Cruz’s training at the Academy and because his dismissal from the Academy fell within the CJTC’s authority for training and discipline. Cruz contends that RCW 43.101.390 does not confer absolute immunity and that there remains a triable issue of fact as to whether the CJTC Defendants’ discriminatory and retaliatory conduct removed their conduct from the scope of RCW 43.101.390’s protection. Thus, we must decide whether RCW 43.101.390’s immunity provision covers *all* torts, including intentional torts, committed by Defendants while administering the Academy. This critical issue of state law is unsettled and dispositive in this case, and it has important public policy ramifications.

The Washington Supreme Court has not addressed the scope of RCW 43.101.390’s immunity provision. The Washington Court of Appeals, however, has held that RCW 43.101.390 provides broad immunity for *negligent* conduct performed within the course of the CJTC’s duties. *See Ent v. Washington State Criminal Justice Training Com’n*, 174 Wash. App. 615, 622 (2013). In *Ent*, a student police officer at the CJTC’s training academy in Burien, Washington, was forced to stand for over an hour at an inspection and graduation ceremony, causing him to faint and strike his head on the floor; by that point, two of his classmates had already fallen to the floor. *Id.* at 617. He sustained significant head injuries and sued the Commission for negligence. *Id.* The trial court granted the CJTC’s motion for judgment on the pleadings based on statutory immunity under RCW 43.101.390. *Id.* at 618. The Washington Court of Appeals affirmed, ruling that “[i]mmunity unambiguously

applies to chapter 43.101 RCW in its entirety.” *Id.* at 619. It rejected the plaintiff’s concerns about “troubling scenarios” that might result from this finding of broad immunity under RCW 43.101.390, such as protection from civil and criminal liability even for “obvious negligence,” “embezzl[ing] funds,” and “manslaughter,” because such scenarios result from a “legislative policy choice.” *Id.* at 621.

The *Ent* court then considered whether the defendants’ conduct was performed within the course of their duties. It found that requiring attendance at the Academy inspection and graduation ceremony was “well within [the CJTC’s] discretion,” noting that “[t]he legislature gave the CJTC broad authority to develop and implement curriculum necessary for its training programs.” *Id.* at 622.

In *Ent*, the CJTC argued that it was entitled to “blanket immunity.” *Id.* at 618. While the Washington Court of Appeals did not explicitly state that CJTC enjoys “blanket” immunity, it held that the immunity provision “cannot be reasonably read to limit or contradict the scope of the [CJTC]’s responsibility or authority to act.” *Id.* Then, in a separate section, it rejected the plaintiff’s alternative argument that the CJTC’s actions were not “performed in the course of their duties in the administration and enforcement of th[e] chapter.” *See id.* at 621–22; RCW 43.101.390. The *Ent* court concluded that, even presuming the plaintiff’s allegations were true, he could prove no set of facts consistent with his complaint entitling him to recovery, since the alleged conduct fell comfortably within the broad authority RCW 43.101 provides to the CJTC. 174 Wash. App. at 622 (citing RCW 43.101.080(8)–(13)). *Ent*’s rejection of the plaintiff’s alternative arguments—one based on statutory interpretation, and the other based on presumed

facts and surrounding statutory provisions—does not expressly resolve whether intentional torts committed while administering the Academy are “official acts” subject to immunity.

This question is central to this case. It is uncontested that the state legislature has delegated authority to the CJTC to train and discipline police officers. RCW 43.101.020(2); *see also id.* 43.101.200(1) (requiring that all law enforcement personnel complete basic law enforcement training); *id.* 43.101.200(2) (providing that the CJTC shall provide such training); *id.* 43.101.080(6) (granting authority to contract with other organizations for training personnel). The CJTC Defendants argue that, because the immunity provision applies to *any* civil or criminal suit arising from Cruz’s undisputed participation in the Academy, his state claims must be dismissed as a matter of law. On the other hand, Cruz argues that the CJTC Defendants’ conduct exceeded the scope of this authority. That is, he contends that when Defendants committed the alleged intentional torts based on personal animus, they were not “acting on behalf of the commission,” and their conduct did not qualify as “official acts performed in the course of their duties.” RCW 43.101.390(1). Therefore, Cruz argues that further discovery regarding, for example, discriminatory or retaliatory intent and any departures from established policies and procedures may establish a genuine dispute of material fact.

Even assuming that *Ent* holds that RCW 43.101.390(1) confers absolute immunity, the Washington Supreme Court has never held that such immunity extends to egregious or intentional conduct. *See Ent*, 174 Wash. App. at 621 (stating in dictum that it does). This sweeping interpretation of the immunity provision has broad implications that are best

addressed by the highest court of the state, and the Washington Supreme Court may interpret RCW 43.101.390 differently than did the Washington Court of Appeals in the context of intentional torts.

We recognize the burden that certifying a question imposes on a state court. However, certification is “particularly appropriate” where, as here, the issues of law are not only unsettled but also have “significant policy implications.” *Centurion Props. III, LLC v. Chi. Title Ins. Co.*, 793 F.3d 1087, 1089 (9th Cir. 2015) (internal quotation marks and citation omitted). Resolution of the certified question could have a significant impact on the state’s liability, as well as the training and public perception of law enforcement officers in Washington. Given the significance of the policy issues implicated by Cruz’s state claims and the unsettled state of the law, we conclude that certification is the most appropriate course of action.

### ORDER

We respectfully certify to the Washington Supreme Court the following question:

What is the scope of immunity provided by RCW 43.101.390? Specifically, does the provision grant immunity for intentional torts committed in the course of administering the Basic Law Enforcement Academy?

We do not intend the phrasing of our question to restrict the Washington Supreme Court’s deliberations. We recognize that the Washington Supreme Court may exercise its discretion and reformulate the question. *Broad v.*

*Mannesmann Anlagenbau AG*, 196 F.3d 1075, 1076 (9th Cir. 1999).

The Clerk of Court is ordered to transmit to the Washington Supreme Court, under official seal of the Ninth Circuit, this order and request for certification along with all relevant briefs and excerpts of record pursuant to Wash. Rev. Code 2.60.010 and 2.60.030 and Washington Rule of Appellate Procedure 16.16. If the Washington Supreme Court accepts the certified question, we designate the CJTC Defendants to file the first brief pursuant to Washington Rule of Appellate Procedure 16.16(e)(1).

Further proceedings in this court are stayed pending the Washington Supreme Court's decision whether to accept review—and, if that Court accepts review, pending receipt of answers to the certified question. This appeal is withdrawn from submission until further order. The Clerk is directed to administratively close the docket. The panel will resume control and jurisdiction upon the Washington Supreme Court's decision to not accept the certified question or upon receipt of answers to the certified question.

When the Washington Supreme Court decides whether to accept the certified question, or orders additional briefing before deciding whether to accept the question, the parties are directed to promptly file a joint status report informing us. If the Washington Supreme Court accepts the certified question, the parties are directed to file further joint status reports informing us when briefing has been completed and a date set for oral argument and when the Washington Supreme Court provides answers to the certified question.

It is so **ORDERED**.



/s/ Mary H. Murguia

Chief Judge Mary H. Murguia

U.S. Court of Appeals for the Ninth Circuit

## General Docket

## United States Court of Appeals for the Ninth Circuit

**Court of Appeals Docket #:** 21-35912**Docketed:** 11/02/2021**Nature of Suit:** 3442 Jobs**Termed:** 04/28/2023

John Cruz v. City of Spokane, et al

**Appeal From:** U.S. District Court for Eastern Washington, Spokane**Fee Status:** Paid**Case Type Information:**

- 1) civil
- 2) private
- 3) null

**Originating Court Information:****District:** 0980-2 : 2:20-cv-00250-SAB**Trial Judge:** Stanley Allen Bastian, Chief District Judge**Date Filed:** 07/15/2020**Date Order/Judgment:**

10/08/2021

**Date Order/Judgment EOD:**

10/08/2021

**Date NOA Filed:**

11/01/2021

**Date Rec'd COA:**

11/01/2021

**Prior Cases:**

None

**Current Cases:**

None

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FERRY COUNTY

Defendant,

CITY OF REPUBLIC, a municipal corporation

Defendant,

RAY MAYCUMBER, Ferry County Sheriff

Defendant,

AMY ROOKER, Ferry County Chief Civil Deputy

Defendant,

AUSTIN HERSHAW, Police Officer at the Black Diamond  
Police Department

Defendant,

PATRICK RAINER, Detective at the Ferry County Sheriff's  
Office

Defendant,

JOHN J. CRUZ,

Plaintiff – Appellee,

v.

CITY OF SPOKANE; WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION, a state commission; RICK BOWEN, Commander of the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; JOHN EVERLY, Police Officer at the Spokane Police Department and Assistant Commander of the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; ART DOLLARD, Police Officer at the Spokane Police Department and TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; JAKE JENSEN, Police Officer at the Spokane Police Department and TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; TODD BELITZ, Police Officer at the Spokane Police Department and TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; SUE RAHR, Executive Director of the Washington State Criminal Justice Training Commission,

Defendants – Appellants,

and

FERRY COUNTY; CITY OF REPUBLIC, a municipal corporation; RAY MAYCUMBER, Ferry County Sheriff; AMY ROOKER, Ferry County Chief Civil Deputy; AUSTIN HERSHAW, Police Officer at the Black Diamond Police Department; PATRICK RAINER, Detective at the Ferry County Sheriff's Office,

Defendants.



11/02/2021	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission Mediation Questionnaire due on 11/09/2021. Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission opening brief due 01/03/2022. Appellee John J. Cruz answering brief due 01/31/2022. Appellants' optional reply brief is due 21 days after service of the answering brief. [12275780] (HH) [Entered: 11/02/2021 12:34 PM]
11/09/2021	<u>2</u>	Filed (ECF) Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission Mediation Questionnaire. Date of service: 11/09/2021. [12282439] [21-35912] (Warring, Carl) [Entered: 11/09/2021 10:24 AM]
11/09/2021	3	The Mediation Questionnaire for this case was filed on 11/09/2021. To submit pertinent <b>confidential</b> information directly to the Circuit Mediators, please use the following <a href="#">link</a> . Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts.[12282815]. [21-35912] (AD) [Entered: 11/09/2021 12:44 PM]
11/19/2021	<u>4</u>	MEDIATION CONFERENCE SCHEDULED – DIAL IN AssessmentConference, 12/08/2021, 2:00 p.m., PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [12293369] (LW) [Entered: 11/19/2021 12:56 PM]
12/27/2021	5	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission. New requested due date is 02/02/2022. [12324815] [21-35912] (Warring, Carl) [Entered: 12/27/2021 08:13 AM]
12/27/2021	6	<b>Streamlined request [5] by Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission to extend time to file the brief is approved. Amended briefing schedule: Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission opening brief due 02/02/2022. Appellee John J. Cruz answering brief due 03/04/2022. The optional reply brief is due 21 days from the date of service of the answering brief.</b> [12325545] (JN) [Entered: 12/27/2021 05:03 PM]
01/13/2022	<u>7</u>	Filed order MEDIATION (LW): The briefing schedule previously set by the court is reset as follows: appellants' opening brief is due April 04, 2022; appellee's answering brief is due May 04, 2022; appellant's optional reply brief is due within 21 days from the service date of the answering brief. [12340485] (SB) [Entered: 01/13/2022 03:17 PM]
01/31/2022	<u>8</u>	MEDIATION STATUS REPORT DUE – 02/08/2022. See order for details. [12355659] (LW) [Entered: 01/31/2022 09:42 AM]
02/18/2022	<u>9</u>	MEDIATION STATUS REPORT DUE – 03/02/2022. See order for details. [12374183] (MS) [Entered: 02/18/2022 08:23 AM]
02/18/2022	10	Filed (ECF) notice of appearance of Taylor M. Hennessey (Attorney General of Washington) for Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission. Date of service: 02/18/2022. (Party was previously proceeding with counsel.) [12374379] [21-35912] (Hennessey, Taylor) [Entered: 02/18/2022 09:56 AM]

02/18/2022	<u>11</u>	Added Attorney(s) Taylor Hennessey for party(s) Appellant Rick Bowen Appellant City of Spokane Appellant Art Dollard Appellant John Everly Appellant Washington State Criminal Justice Training Commission Appellant Todd Belitz Appellant Jake Jensen Appellant Sue Rahr, in case 21-35912. [12374392] (DJV) [Entered: 02/18/2022 10:00 AM]
03/03/2022	<u>12</u>	MEDIATION STATUS REPORT DUE – 03/16/2022. See order for details. [12385184] (LW) [Entered: 03/03/2022 10:54 AM]
03/25/2022	<u>13</u>	Filed order MEDIATION (LW): The briefing schedule previously set by the court is reset as follows: appellants' opening brief is due May 04, 2022; appellee's answering brief is due June 03, 2022; appellants' optional reply brief is due within 21 days from the service date of the answering brief. [12404960] (SB) [Entered: 03/25/2022 10:37 AM]
04/11/2022	<u>14</u>	MEDIATION STATUS REPORT DUE – 04/27/2022. See order for details. [12416837] (LW) [Entered: 04/11/2022 09:10 AM]
05/02/2022	<u>15</u>	MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant settlement discussions while the appeal is pending. The briefing schedule previously set by the court remains in effect. [12435558] (LW) [Entered: 05/02/2022 09:14 AM]
05/04/2022	<u>16</u>	Submitted (ECF) Opening Brief for review. Submitted by Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission. Date of service: 05/04/2022. [12437902] [21-35912] (Hennessey, Taylor) [Entered: 05/04/2022 10:59 AM]
05/04/2022	<u>17</u>	Submitted (ECF) excerpts of record. Submitted by Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission. Date of service: 05/04/2022. [12437911] [21-35912] (Hennessey, Taylor) [Entered: 05/04/2022 11:04 AM]
05/04/2022	<u>18</u>	Filed clerk order: The opening brief [ <u>16</u> ] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [ <u>17</u> ] submitted by appellants are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12438440] (KWG) [Entered: 05/04/2022 03:22 PM]
05/10/2022	19	Received 6 paper copies of Opening Brief [ <u>16</u> ] filed by appellants. [12442971] (NAR) [Entered: 05/10/2022 01:28 PM]
05/10/2022	20	Received 3 paper copies of excerpts of record [ <u>17</u> ] in 1 volume(s) filed by appellants. [12442979] (NAR) [Entered: 05/10/2022 01:32 PM]
06/02/2022	21	Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee John J. Cruz. New requested due date is 07/01/2022. [12462554] [21-35912] (Jacobowitz, Emanuel) [Entered: 06/02/2022 07:20 PM]
06/03/2022	22	<b>Streamlined request [21] by Appellee John J. Cruz to extend time to file the brief is approved. Streamline requests allow for 30 day extensions. Amended briefing schedule: Appellee John J. Cruz answering brief due 07/05/2022. The optional reply brief is due 21 days from the date of service of the answering brief.</b> [12462630] (DLM) [Entered: 06/03/2022 08:35 AM]
07/05/2022	<u>23</u>	Submitted (ECF) Answering Brief for review. Submitted by Appellee John J. Cruz. Date of service: 07/05/2022. [12486792] [21-35912]--[COURT UPDATE: Attached corrected brief. 07/07/2022 by JMR] (Jacobowitz, Emanuel) [Entered: 07/05/2022 05:16 PM]

- 07/07/2022 24 Filed clerk order: The answering brief [23] submitted by John J. Cruz is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be submitted to the principal office of the Clerk. [12488364] (JMR) [Entered: 07/07/2022 11:40 AM]
- 07/21/2022 25 This case is being considered for an upcoming oral argument calendar in Seattle
- Please review the Seattle sitting dates for November 2022 and the 2 subsequent sitting months in that location at [http://www.ca9.uscourts.gov/court\\_sessions](http://www.ca9.uscourts.gov/court_sessions). If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation).[12498956]. [21-35912] (KS) [Entered: 07/21/2022 09:21 AM]
- 07/22/2022 26 Filed (ECF) Attorney Mr. Carl P. Warring for Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission response to notice for case being considered for oral argument. Date of service: 07/22/2022. [12500020] [21-35912] (Warring, Carl) [Entered: 07/22/2022 11:27 AM]
- 07/26/2022 27 Submitted (ECF) Reply Brief for review. Submitted by Appellants Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, Todd Belitz, Jake Jensen, Art Dollard and John Everly. Date of service: 07/26/2022. [12502584] [21-35912] (Hennessey, Taylor) [Entered: 07/26/2022 01:21 PM]
- 07/27/2022 28 Filed clerk order: The reply brief [27] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [12503657] (JMR) [Entered: 07/27/2022 02:38 PM]
- 08/02/2022 29 Received 6 paper copies of Reply Brief [27] filed by Appellants. [12507437] (SD) [Entered: 08/02/2022 11:16 AM]
- 08/02/2022 30 Filed (ECF) Attorney Emanuel Fraser Jacobowitz, Esquire for Appellee John J. Cruz response to notice for case being considered for oral argument. Date of service: 08/02/2022. [12507505] [21-35912] (Jacobowitz, Emanuel) [Entered: 08/02/2022 11:52 AM]
- 08/17/2022 31 Filed (ECF) Attorney Mr. Carl P. Warring for Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission response to notice for case being considered for oral argument. Date of service: 08/17/2022. [12519230] [21-35912] (Warring, Carl) [Entered: 08/17/2022 04:00 PM]
- 08/28/2022 32 Notice of Oral Argument on Monday, November 7, 2022 – 09:30 A.M. – SE 7th Flr Courtroom 2 – Scheduled Location: Seattle WA.  
The hearing time is the local time zone at the scheduled hearing location.
- View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Anyone appearing in person must review and comply with our Protocols for In Person Hearings, available [here](#). At this time, an election to appear remotely by video will not require a motion. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance.

Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so.

Be sure to review the **GUIDELINES** for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 28 days before Monday, November 7, 2022. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12527965]. [21-35912] (KS) [Entered: 08/28/2022 06:09 AM]

- |            |           |   |
|------------|-----------|---|
| 09/08/2022 | <u>33</u> | Filed (ECF) Appellee John J. Cruz Stipulated Motion to continue hearing of case. Date of service: 09/08/2022. [12536432] [21-35912] (Arnold, Nathan) [Entered: 09/08/2022 03:50 PM]   |
| 09/21/2022 | <u>34</u> | Filed clerk order (Deputy Clerk: AF): Plaintiff-Appellee's stipulated motion to continue oral argument (Dkt. No. <u>33</u> ) is GRANTED. The Oral Argument scheduled for November 7, 2022 in Seattle, Washington is VACATED. The Clerk of Court shall consult with counsel for both sides as to their availability for a future oral argument, by video or otherwise. [12546194] (AF) [Entered: 09/21/2022 04:30 PM]  |
| 09/23/2022 | 35        | Filed (ECF) notice of appearance of Heidi S. Holland (Washington State Office of the Attorney General, 116 W. Riverside Ave., Ste. 100, Spokane, WA 99201) for Appellants Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen and Todd Belitz. Substitution for Attorney Mr. Carl P. Warring for Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission. Date of service: 09/23/2022. (Party was previously proceeding with counsel.) [12548321] [21-35912] (Holland, Heidi) [Entered: 09/23/2022 04:22 PM] |
| 09/23/2022 | 36        | Attorney Carl P. Warring substituted by Attorney Heidi S. Holland. [12548329] (RL) [Entered: 09/23/2022 04:27 PM]   |
| 11/16/2022 | 37        | This case is being considered for an upcoming oral argument calendar in Seattle   |

Please review the Seattle sitting dates for March 2023 and the 2 subsequent sitting months in that location at [http://www.ca9.uscourts.gov/court\\_sessions](http://www.ca9.uscourts.gov/court_sessions). If you have an unavoidable conflict on any of the dates, please file **Form 32** **within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.

When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation).[12588577].  
[21-35912] (KS) [Entered: 11/16/2022 10:11 AM]

11/17/2022 38 Filed (ECF) Attorney Heidi S. Holland, Esquire for Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission response to notice for case being considered for oral argument. Date of service: 11/17/2022. [12589971] [21-35912] (Holland, Heidi) [Entered: 11/17/2022 11:54 AM]

01/15/2023 39 Notice of Oral Argument on Thursday, March 30, 2023 – 09:00 A.M. – SE 7th Flr Courtroom 2 – Scheduled Location: Seattle WA.  
The hearing time is the local time zone at the scheduled hearing location.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Anyone appearing in person must review and comply with our Protocols for In Person Hearings, available [here](#). At this time, an election to appear remotely by video will not require a motion. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance.

Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so.

Be sure to review the **GUIDELINES** for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 28 days before Thursday, March 30, 2023. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12630888]. [21-35912] (KS) [Entered: 01/15/2023 06:09 AM]

02/17/2023 40 Filed (ECF) Acknowledgment of hearing notice by Attorney Heidi S. Holland, Esquire for Appellants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr and Washington State Criminal Justice Training Commission. Hearing in Seattle on 03/30/2023 at 9:00 a.m. (Courtroom: 7th Floor, Courtroom 2). Filer sharing argument time: No. (Argument minutes: 15) Appearance in person or by video: I wish to appear in person. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 02/17/2023. [12655771] [21-35912] (Holland, Heidi) [Entered: 02/17/2023 11:26 AM]

02/28/2023	<u>41</u>	Filed (ECF) Acknowledgment of hearing notice by Attorney Nathan J. Arnold for Appellee John J. Cruz. Hearing in Seattle on 03/30/2023 at 9:00 AM (Courtroom: Courtroom 2). Filer sharing argument time: No. (Argument minutes: 10) Appearance in person or by video: I wish to appear in person. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 02/28/2023. [12663562] [21-35912] (Arnold, Nathan) [Entered: 02/28/2023 11:02 AM]
03/23/2023	<u>42</u>	Filed (ECF) Appellants Washington State Criminal Justice Training Commission, City of Spokane, Todd Belitz, John Everly, Jake Jensen, Rick Bowen, Art Dollard and Sue Rahr citation of supplemental authorities. Date of service: 03/23/2023. [12680451] [21-35912] (Holland, Heidi) [Entered: 03/23/2023 12:10 PM]
03/23/2023	<u>43</u>	Filed order (JACQUELINE H. NGUYEN, ANDREW D. HURWITZ and DEAN D. PREGERSON): Oral argument in this case shall be limited to 10 minutes per side. [12680688] (AF) [Entered: 03/23/2023 02:43 PM]
03/30/2023	<u>44</u>	ARGUED AND SUBMITTED TO JACQUELINE H. NGUYEN, ANDREW D. HURWITZ and DEAN D. PREGERSON. The audio and video recordings of this hearing are available on our website at <a href="http://www.ca9.uscourts.gov/media/">http://www.ca9.uscourts.gov/media/</a> . [12685821] (KAD) [Entered: 03/30/2023 01:36 PM]
04/28/2023	<u>45</u>	Order filed for PUBLICATION (JACQUELINE H. NGUYEN, ANDREW D. HURWITZ and DEAN D. PREGERSON) We respectfully certify to the Washington Supreme Court the following question: (SEE ORDER FOR FULL TEXT). Further proceedings in this court are stayed pending the Washington Supreme Court's decision whether to accept review—and, if that Court accepts review, pending receipt of answers to the certified question. This appeal is withdrawn from submission until further order. The Clerk is directed to administratively close the docket. The panel will resume control and jurisdiction upon the Washington Supreme Court's decision to not accept the certified question or upon receipt of answers to the certified question. When the Washington Supreme Court decides whether to accept the certified question, or orders additional briefing before deciding whether to accept the question, the parties are directed to promptly file a joint status report informing us. If the Washington Supreme Court accepts the certified question, the parties are directed to file further joint status reports informing us when briefing has been completed and a date set for oral argument and when the Washington Supreme Court provides answers to the certified question. It is so ORDERED. [12704746] (AKM) [Entered: 04/28/2023 08:36 AM]

NO. 21-35912

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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Washington State Criminal Justice Training Commission, et al,

Appellants,

v.

John Cruz,

Respondent.

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ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

No. 20-cv-00250-SAB  
The Honorable Stanley Bastian  
United States District Court Judge

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**APPELLANT'S OPENING BRIEF**

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ROBERT W. FERGUSON  
Attorney General

Taylor Hennessey, WSBA No. 54135  
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## I. INTRODUCTION

The district court erred in refusing to give effect to the broad statutory immunity from any civil or criminal suit the Washington State Legislature explicitly granted to the Washington State Criminal Justice Training Commission (Commission) and individuals acting on its behalf. *See* Wash. Rev. Code § 43.101.390. The Legislature created the Commission to establish and administer standards and processes for certification, suspension, and decertification of peace officers and corrections officers. Wash. Rev. Code § 43.101.020(2). The Legislature further tasked the Commission with providing “programs and training that enhance the integrity, effectiveness, and professionalism of peace officers and corrections officers[.]” *Id.* The guiding principle is “to promote public trust and confidence in every aspect of the criminal justice system.” *Id.*

In this case, the Commission dismissed Respondent John Cruz from its Basic Law Enforcement Academy because it determined he was dishonest during an investigation into Cruz’s conduct as a cadet. Cruz then sued, alleging various state law and federal claims based upon his treatment during Basic Law Enforcement Academy training modules and the Commission’s decision to dismiss him from training. No factual dispute exists that each of the discrete acts

by the Commission of which Cruz complains are acts that arose from his participation in Basic Law Enforcement Academy as a cadet.

Cruz's state law claims are therefore barred by the immunity the Legislature expressly provided from *any* civil or criminal suit, and the Commission brought a motion for partial summary judgment to dismiss those claims. The district court erred when it created an exception to the broad immunity statute when the plaintiff alleges a discriminatory motive—which would be impossible to square with the plain language of the statute or the Washington case law interpreting it—and interpreted the statute to exclude agents of the Commission. This Court should therefore reverse the district court's denial of partial summary judgment.<sup>1</sup>

## **II. JURISDICTIONAL STATEMENT**

On October 8, 2021, the Federal District Court, Eastern District of Washington, denied the Commission's motion for partial summary judgment, a motion based on an immunity from suit granted by the Washington State Legislature in Wash. Rev. Code § 43.101.390(1). The district court exercised jurisdiction over the state law claims forming the basis for the motion for partial

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<sup>1</sup> This motion did not seek dismissal of Cruz's 42 U.S.C. § 1983 claims, and Commission Defendants acknowledge that the state immunity statute does not apply to those claims.

summary judgment pursuant to 28 U.S.C. § 1367. On November 1, 2021, the Commission timely filed a Notice of Appeal pursuant to FRAP 4(a)(1)(A). The Commission's appeal is taken as a matter of right and this Court has jurisdiction pursuant to 28 U.S.C. § 1291 and the collateral order doctrine, *see Tuuamalemalō v. Greene*, 946 F.3d 471 (9th Cir. 2019), which permits the interlocutory review of orders that deny immunity from suit.

### **III. ISSUE PRESENTED FOR REVIEW**

Did the trial court err when it failed to dismiss Cruz's state law claims against the Commission and its instructors and administrators, when Wash. Rev. Code § 43.101.390(1) expressly immunizes the Commission and individuals acting on its behalf from suit in any civil or criminal action?

### **IV. STATEMENT OF THE CASE**

#### **A. The Criminal Justice Training Commission and the Basic Law Enforcement Academy**

The State of Washington requires that all law enforcement personnel engage in and successfully complete basic law enforcement training. Wash. Rev. Code § 43.101.200(1). The Legislature has delegated the authority to train and discipline police officers to the Commission. Wash. Rev. Code § 43.101.020(2). As required by statute, the Commission operates the Basic Law Enforcement Academy for that purpose. Wash. Rev. Code § 43.101.200(1). The Academy

staff includes officers from state and local law enforcement agencies who teach new officers the role and responsibilities of an officer from the Commission-designed and approved curriculum. Wash. Rev. Code § 43.101.080(6) (granting authority to contract with other organizations for training personnel).

The Legislature granted the Commission immunity from civil or criminal suit in carrying out its delegated powers:

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in *any* civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

Wash. Rev. Code § 43.101.390(1).

**B. Cruz's State Law Claims Arise From His Participation in and Dismissal From Basic Law Enforcement Academy**

Cruz was hired as a peace officer with the Republic Police Department on September 1, 2016. ER-193. As required by statute, Cruz began his training at the Commission's Basic Law Enforcement Academy in February 2017. ER-195; Wash. Rev. Code § 43.101.200(1). He was dismissed in May 2017, following a determination that he had been dishonest during an investigation into his conduct as a cadet. ER-200, 202. He appealed his dismissal in June 2017, and the Commission's Executive Director upheld the dismissal decision. ER-202.

In this action, Cruz has named, among others, the Washington State Criminal Justice Training Commission, the City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, and Todd Belitz (collectively “Commission Defendants”) as defendants. ER-193. It is undisputed that at all times relevant to this lawsuit, all of the individual Commission Defendants were acting in their roles as administrators or instructors in conjunction with Basic Law Enforcement Academy. ER-139–40.<sup>2</sup> Sue Rahr was the Executive Director of the Commission. ER-140. Rick Bowen was the Commander of Basic Law Enforcement Academy. *Id.* John Everly was serving as the Assistant Commander of Basic Law Enforcement Academy and is also employed by the Spokane Police Department.<sup>3</sup> ER-140. Art Dollard and Jake Jensen, both Spokane Police Department employees, were serving as Defensive Tactics

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<sup>2</sup> The Office of the Attorney General does not represent the remaining defendants: Ferry County, the City of Republic, Ray Maycumber, Amy Rooker, Austin Hershaw, and Patrick Rainer. They were not serving as part of the Commission or acting as its agents as part of Basic Law Enforcement Academy.

<sup>3</sup> The Commission’s Basic Law Enforcement Academy staff includes officers from Spokane Police Department, as contemplated by Wash. Rev. Code § 43.101.080(6). Further, Wash. Rev. Code § 43.101.080(1) provides that the Commission “assume[s] legal, fiscal, and program responsibility for all training conducted by the commission.” Accordingly, the Office of the Attorney General represents the City of Spokane in this action in that the allegations against its employees arise out of their service as instructors and administrators with the Commission and Basic Law Enforcement Academy.



Instructors at Basic Law Enforcement Academy. *Id.* Todd Belitz was also a Defensive Tactics Instructor at Basic Law Enforcement Academy. *Id.*

### **C. Procedural History**

Cruz filed his Complaint on May 5, 2020, alleging eight state law claims, as well as federal claims brought pursuant to 42 U.S.C. § 1983, based upon his treatment during Basic Law Enforcement Academy training modules and the Commission's decision to dismiss him from training. ER 191, 203–20. Commission Defendants moved for partial summary judgment only as to the state law claims, based on the statutory immunity provided by Wash. Rev. Code § 43.101.390(1).<sup>4</sup> ER-125. The district court denied summary judgment. ER-4.

### **V. SUMMARY OF THE ARGUMENT**

Cruz's state law claims fail as a matter of law. The Washington State Legislature defined the Criminal Justice Training Commission's mission of training and disciplining prospective and commissioned police officers and conferred broad statutory immunity from any civil or criminal suit for individuals acting in the course of their Commission duties. The conduct forming the basis for Cruz's claims against Commission Defendants occurred during

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<sup>4</sup> The Legislature amended Wash. Rev. Code § 43.101.390(1) in 2021, but left the relevant language intact.

Basic Law Enforcement Academy and fell within the Commission's scope of authority for training and discipline. Wash. Rev. Code § 43.101.390(1) therefore bars suit on Cruz's eight state law claims against Commission Defendants, and those claims should be dismissed.

## **VI. STANDARD OF REVIEW**

The denial of summary judgment on a state law immunity issue is subject to de novo review, and the facts are construed in the light most favorable to the nonmoving party. *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 606 (9th Cir. 2019). Further, whether disputed facts are material is always a question of law subject to appellate review. *Thomas v. Gomez*, 143 F.3d 1246, 1248 (9th Cir. 1998).

## **VII. ARGUMENT**

### **A. The Plain Language of Wash. Rev. Code § 43.101.390 Explicitly Provides for Immunity Without Exception**

The district court erred by creating an exception to Wash. Rev. Code § 43.101.390 for claims in which a plaintiff alleges discriminatory or retaliatory conduct. ER-28–29. The language of Wash. Rev. Code § 43.101.390(1) is clear and contains no such exception.

Wash. Rev. Code § 43.101.390(1) provides:

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in *any* civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

Wash. Rev. Code § 43.101.390(1) (emphasis added).

The Washington Supreme Court has instructed, “Where statutory language is plain and unambiguous, we ascertain the meaning of the statute solely from its language. We read an unambiguous statute as a whole and must give effect to all of its language.”<sup>5</sup> *Dot Foods, Inc. v. Wash. Dep’t of Revenue*, 215 P.3d 185, 188 (9th Cir. 2009). “To interpret a statute’s plain language, we examine the text of the statute, as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Cent. Puget Sound Reg’l Transit Auth. v. WR-SRI 120th N. LLC*, 422 P.3d 891, 899 (2018) (internal quotation marks omitted). Moreover, a court “cannot add words or clauses to a statute when the legislature has chosen not to include such language.” *Dot Foods, Inc.*, 215 P.3d at 189. Neither may a court “interpret a statute in a way that renders a portion meaningless or superfluous.” *Cent. Puget Sound Reg’l Transit Auth.*, 422 P.3d at 899.

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<sup>5</sup> Federal courts follow state rules of statutory interpretation when interpreting a state statute. *Brunozzi v. Cable Commc’ns, Inc.*, 851 F.3d 990, 998 (9th Cir. 2017)

Had the Legislature intended to carve out civil suits alleging discriminatory, retaliatory, or other improper motives from its grant of immunity to individuals acting on behalf of the Commission, it could have done so. It did not. To the contrary, the Legislature explicitly granted agents of the Commission immunity from “any” suit – both civil and criminal – “based upon . . . official acts performed in the course of their duties in the administration and enforcement of this chapter.” Wash. Rev. Code § 43.101.390(1). The chapter, in turn, delegates the authority to train and discipline police officers to the Commission. Wash. Rev. Code § 43.101.080(1)-(2). Thus, immunity applies to suits where the alleged acts occurred as part of training and discipline, including at Basic Law Enforcement Academy. *See Ent v. Wash. State Crim. Just. Training Com’n*, 174 Wash. App. 615, 619-20, 301 P.3d 468, 470-71 (2013) (holding that immunity “unambiguously applies to chapter 43.101 in its entirety[,]” including the Commission’s training activities).

The Washington Court of Appeals has already concluded that the alleged motivation of a Commission defendant is not relevant for, and does not provide an exception to, the statutory grant of immunity.<sup>6</sup> In *Ent v. Wash. State Crim.*

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<sup>6</sup> “[W]here there is no convincing evidence that the state supreme court would decide differently, a federal court is obligated to follow the decisions of

*Just. Training Com'n*, 174 Wash. App. at 621, the plaintiff, Ent, brought an action for an injury he suffered while a cadet at Basic Law Enforcement Academy. The Commission moved to dismiss based on statutory immunity, and the trial court granted the motion. *Id.* at 618. On appeal, Ent argued that the statute did not provide the Commission with “blanket tort immunity,” and that even if it did, the acts he alleged did not fall “within the purview of protected activity.” *Id.* at 618. The Court of Appeals disagreed and affirmed dismissal. *Id.*

In so doing, the Court of Appeals rejected the analysis relied on by the district court here. It held that the statute was not ambiguous and that the civil and criminal immunity afforded to the Commission includes even intentional and “wrongful actions”; the court specifically noted the example of criminal allegations made against a Commission training instructor that would require a finding of wrongful intent, but would nonetheless be immune from criminal liability. *Id.* at 621. This broad immunity “result[s] from a legislative policy choice.” *Id.* at 621. The court added, “Whether or not we agree with broad immunity . . . as a matter of public policy is irrelevant. The State has authority to determine whether it will be immune from liability for its acts. Therefore, any

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the state's intermediate appellate courts.” *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001)

challenge to the wisdom of such broad immunity is an issue to be taken to the legislature.” *Id.*

The district court’s conclusion that resolution of the individual defendants’ motivations is required before a determination on immunity—and that any finding of “personal animus” would render immunity unavailable—is impossible to square with *Ent.* ER-28–29. Further, the court’s examination of Commission Defendants’ subjective intent while performing their official duties is impossible to square with the statute’s express provision of immunity from criminal suits, where intent is often a necessary legal component.

The statute explicitly provides immunity from “any civil or criminal action,” and the district court erred in exempting civil suits alleging discriminatory or retaliatory intent. ER-28–29. *See Dot Foods, Inc.*, 166 Wn.2d at 920 (a court cannot add language to a statute). Moreover, to add an exception where none exists would impermissibly render the use of the word “any” meaningless or superfluous. *See Cent. Puget Sound Reg’l Transit Auth.*, 191 Wash. 2d at 234. The United States Supreme Court has noted that “a state of mind is easy to allege and hard to disprove . . . .” *Nieves v. Bartlett*, 139 S. Ct. 1715, 1725 (2019). The district court’s approach would effectively allow a plaintiff to subvert the clear intent of the Legislature by allowing even doubtful

claims to proceed based solely on allegations about the individual defendants' mental state.

Here, the statute is unambiguous and unequivocal: the Commission and individuals acting on its behalf are entitled to immunity from any civil and criminal suit when they are acting in the course of their official duties. The Washington Supreme Court has made clear that courts are “required to assume the Legislature meant exactly what it said and apply the statute as written.” *Duke v. Boyd*, 133 Wash. 2d 80, 87, 942 P.2d 351, 354 (1997). And this Court has cautioned, “If federal courts ‘could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and [their] own imaginations, [they] would risk amending statutes outside the legislative process ....’” *United States v. King*, 24 F.4th 1226, 1231 (9th Cir. 2022) (quoting *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020)). The district court’s imposition of an exception to immunity from *any* suit (criminal or civil) invades the province of the Legislature and the policy choices it has made. ER-28–29.

**B. Cruz’s State Law Claims Fall Within the Scope of the Immunity Provided by the Washington Legislature and Should be Dismissed**

There can be no dispute that the Legislature vested the Commission with the authority and responsibility to provide cadet training. Wash. Rev. Code §

43.101.080(1). It is further undisputed that the allegations against the Commission Defendants arise out of their service as instructors or administrators with the Commission and Basic Law Enforcement Academy. ER-139–40, 203–20. Accordingly, the Commission Defendants’ alleged actions fall within the scope of the broad immunity that the Legislature conferred on those acting on behalf of the Commission as part of Basic Law Enforcement Academy. Wash. Rev. Code § 43.101.390(1).

**1. Immunity granted by the Legislature extends to instructors and administrators working at Basic Law Enforcement Academy**

The Commission Defendants were acting on behalf of the Commission at all times relevant to this action, as required by Wash. Rev. Code § 43.101.390(1) (“The commission *and individuals acting on behalf of the commission* are immune from suit...”)(emphasis added).

Chapter 43.101 of the Revised Code of Washington is the enabling statute for the Commission. The Legislature described the purpose of the Commission to include “the certification, suspension, and decertification of [police] officers” and training programs to “enhance the integrity, effectiveness, and professionalism” of police officers. Wash. Rev. Code § 43.101.020(2). While statutorily composed of a small board of executive officers, the Commission has the ability to contract with other “qualified organizations for the operation of,



training and education programs for criminal justice personnel.” Wash. Rev. Code § 43.101.080(6), (13). “Individuals acting on behalf of” the Commission are also granted statutory immunity. Wash. Rev. Code § 43.101.390(1).

Cruz named the Washington State Criminal Justice Training Commission, the City of Spokane,<sup>7</sup> Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, and Todd Belitz as defendants. ER-193. Cruz has alleged, and it is undisputed, that at all times relevant to this lawsuit, all of the individual defendants were acting in their roles as administrators or instructors in conjunction with Basic Law Enforcement Academy:

- Sue Rahr, Executive Director of the Commission;
- Rick Bowen, Commander of Basic Law Enforcement Academy;
- John Everly, Assistant Commander of Basic Law Enforcement Academy;
- Art Dollard, Defensive Tactics Instructor<sup>8</sup> at Basic Law Enforcement Academy;

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<sup>7</sup> As previously noted, the City of Spokane is named as a defendant in that Spokane Police Department officers were serving as instructors and administrators with the Commission and Basic Law Enforcement Academy. ER-193. There are no unique allegations regarding the City of Spokane because the individual Spokane employees were only sued based on their roles at the academy.

<sup>8</sup> Cruz refers to this position as a TAC Officer in his Complaint.

- Jake Jensen, Defensive Tactics Instructor at Basic Law Enforcement Academy;
- Todd Belitz, Defensive Tactics Instructor at Basic Law Enforcement Academy;

ER-139–40 (Answer), 193 (Complaint).

Commission Defendants’ motion for partial summary judgment only included conduct attributed to them. ER-121. In response, Cruz conceded that the facts alleged by the Commission Defendants are undisputed, including that the allegations all arose from Cruz’s interactions during Basic Law Enforcement Academy with Commission Defendants who were employed by the Commission. ER-109 (Pl’s. Resp. to Mot. Summary J.), 122–23 (Defs.’ Statement of Material Facts). Each of the Commission Defendants was therefore acting on behalf of the Commission.

**2. Cruz’s claims all concern actions performed in the course of training duties**

Cruz’s allegations concern conduct performed in the course of the Commission Defendants’ duties in the administration and enforcement of Chapter 43.101, and accordingly fall under that chapter’s immunity provision. *See* Wash. Rev. Code § 43.101.390(1) (providing that individuals acting on

behalf of the commission are immune from suit in any action “contesting or based upon . . . official acts performed in the course of their duties in the administration and enforcement of this chapter”).

The Commission has exclusive authority to train cadets to become police officers. Wash. Rev. Code § 43.101.080(1). In *Ent*, the court similarly considered the immunity statute’s application to a claim arising from actions taken by individuals working at Basic Law Enforcement Academy. The plaintiff was injured when he fainted and hit his head during graduation at which he had been required to stand motionless for an extended period of time. *Ent.*, 174 Wash. App. at 617. *Ent* argued the inspection and graduation ceremony were activities not covered by the statute’s immunity. *Id.* at 618. The appellate court disagreed, determining that “[i]mmunity unambiguously applies to chapter 43.101 RCW in its entirety. . . . Cadet training is clearly encompassed within the [Commission’s] duties.” *Id.* at 619. It emphasized that the Legislature “gave the [Commission] broad authority to develop and implement curriculum necessary for its training programs,” and held, “Requiring attendance at a special event is well within this discretion. We must give deference to educators in their curriculum decisions.” *Id.* at 622 (citing *Doherty v. S. Coll. of Optometry*, 862 F.2d 570, 576–77 (6th Cir.1988)) (internal citation to statute omitted).

The same principle applies here. In attempting to distinguish Cruz’s allegations from the graduation ceremony at issue in *Ent*, the district court acknowledged that the ceremony was “well within the scope of the Commission’s activity,” but stated that it was “unclear whether” the acts alleged by Cruz “could be considered part of the Commission’s curriculum necessary for implementing its training programs.” ER-27–29. The court based this distinction on not having before it “Academy or Commission protocols to support the assertion that their conduct involved ‘official acts performed in the course of their duties,’” and found that it needed to know “the extent to which Defendants departed from official training and dismissal procedures.” ER-29, 31.

This conclusion is not supported by the statute or by *Ent*. The Court of Appeals in *Ent* did not rely on any “official protocol” allowing a lengthy inspection at a graduation ceremony, but rather on the broad statutory discretion given to the Commission by the legislature to train cadets, with special events clearly falling within that discretion—consistent with “the wide latitude and discretion afforded by courts to educational institutions in academic matters.” *Ent*, 174 Wash. App. at 622 (quoting *Marquez v. Univ. of Wash.*, 32 Wash. App. 302, 306, 648 P.2d 94 (1982)).

Similarly, here, each of the discrete acts attributed to Commission Defendants were done in the course of instructional duties, and fall equally within the Commission's broad discretion to implement instruction and discipline of cadets in training<sup>9</sup>:

- Being reprimanded for being out of uniform on the first day of training (ER-198);
- Being questioned about an assignment to write an email to his police chief (ER-195);
- Being reprimanded for his cell phone going off during defensive tactics training (ER-195–96);
- Being instructed to demonstrate skills learned by teaching a section of class to his peers (ER-196);
- The manner in which his oleoresin capsicum (pepper spray) certification was administered (ER-197);
- Being required to complete an obstacle course (*Id.*);
- Being paired with multiple recruits for training exercises (*Id.*);

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<sup>9</sup> Commission Defendants denied some of the factual allegations and denied the motive Cruz attached to the official acts, but the allegations are accepted as true for the purpose of the partial summary judgment motion.

- Being advised that he failed to meet expectations, including violating program rules related to parking (ER-198);
- Being questioned about properly storing ammunition (*Id.*);
- Being investigated regarding violation of the guest policy (ER-199–200);
- Being dismissed from Basic Law Enforcement Academy for a violation of the integrity policy (ER-200); and
- Administrative appeal of dismissal being denied (ER-202).

Although the *Ent* court did not cite any protocols relating to graduation ceremonies, here, the regulations promulgated by the Commission clarify the official nature of the actions in question. Report writing, firearms training, and defensive tactics are examples from a non-exclusive list of subject areas for Basic Law Enforcement Academy curriculum. Wash. Admin. Code § 139-05-250(7), (9), (10). Further, cadets must demonstrate passing marks in academic performance, practical skills, and personal conduct in order to graduate from Basic Law Enforcement Academy. Wash. Admin. Code § 139-05-240(1)-(3). *See generally* Wash. Rev. Code § 43.101.080(19) (Commission permitted to promulgate rules and regulations to implement its training goals); Wash. Admin. Code § 139-05-240(3) (failure to adhere to Basic Law Enforcement Academy

rules, regulations, and policies may result in termination); Wash. Admin. Code § 139-05-935 (a cadet who disagrees the Commission's disciplinary decision may appeal by requesting an adjudicative hearing); *see generally* Wash. Admin. Code § 139-03 (Explaining the time frames for appeal, burden of proof, and the adoption of model rules of procedure for administrative hearings).

The statute is both unequivocal and unambiguous: the Commission and administrators and instructors involved in training are immune from suit in *any* civil or criminal action arising from acts performed in the course of their duties. The motives Cruz assigns to the Commission Defendants do not change the circumstances in which the acts occurred, as part of Cruz's participation in Basic Law Enforcement Academy. Accordingly, the plain language of the immunity statute precludes Cruz's state law claims against the Commission Defendants and the district court erred in denying partial summary judgment.

## **VIII. CONCLUSION**

For the foregoing reasons, this Court should reverse the judgment of the district court, grant partial summary judgment to the Commission Defendants, and dismiss Cruz's state law claims against the Commission Defendants.

## **IX. STATEMENT OF RELATED CASES**

Commission Defendants and undersigned attorneys are not aware of any currently pending related cases in the United States Court of Appeals for the Ninth Circuit.

RESPECTFULLY SUBMITTED this 4th day of May, 2022.

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Attorney General

s/ Taylor Hennessey  
\_\_\_\_\_  
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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

*Instructions for this form:* <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

**9th Cir. Case Number(s)** 21-35912

I am the attorney or self-represented party.

**This brief contains** 3,800 **words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

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☐ [ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

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☐ [ ] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

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☐ [ ] complies with the length limit designated by court order dated \_\_\_\_\_.

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**Signature** s/ Taylor Hennessey **Date** 05/04/2022  
(use "s/[typed name]" to sign electronically-filed documents)

NO. 21-35912

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JOHN CRUZ,

Respondent,

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION,  
et al,

Appellant.

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ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

No. 2:20-cv-00250 SAB  
The Honorable Stanley Bastian  
United States District Court Judge

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**APPELLANT'S EXCERPTS OF RECORD  
VOLUME 1 OF 1**

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 01, 2021**

SEAN F. McAVOY, CLERK

**THE HONORABLE STANLEY A. BASTIAN**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

JOHN J. CRUZ,

NO. 2:20-cv-00250-SAB

Plaintiff,

NOTICE OF APPEAL

v.

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal  
corporation; the CITY OF  
SPOKANE, a municipal  
corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, a state  
commission; RAY MAYCUMBER,  
Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief  
Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at  
the Ferry County Sheriffs Office;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice

NOTICE OF APPEAL

1

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1 Training Commission Basic Law  
 2 Enforcement Academy; ART  
 3 DOLLARD, Police Officer at the  
 4 Spokane Police Department and  
 5 TAC Officer at the Washington  
 6 State Criminal Justice Training  
 7 Commission Basic Law  
 8 Enforcement Academy; JAKE  
 9 JENSEN, Police Officer at the  
 10 Spokane Police Department and  
 11 TAC Officer at the Washington  
 12 State Criminal Justice Training  
 13 Commission Basic Law  
 14 Enforcement Academy; and SUE  
 15 RAHR, Executive Director of the  
 16 Washington State Criminal Justice  
 17 Training Commission,

18 Defendants.

19 Notice is hereby given that WASHINGTON STATE CRIMINAL JUSTICE  
 20 TRAINING COMMISSION, CITY OF SPOKANE, SUE RAHR, RICK BOWEN,  
 21 TODD BELITZ, JAKE JENSEN, ART DOLLARD and JOHN EVERLY,  
 22 defendants in the above captioned matter, hereby appeal to the United States Court  
 of Appeals for the Ninth Circuit from the October 8, 2021 Order Denying  
 Defendants' Motion for Partial Summary Judgment (ECF No. 33). Defendants  
 appeal is taken as a matter of right pursuant to 28 U.S.C. § 1291 and the collateral  
 order doctrine, *see Tuuamalemalu v. Greene*, 946 F.3d 471 (9th Cir. 2019), where

1 the District Court's order denied them immunity from suit provided by RCW  
2 43.101.390.

3 Attached as Appendix A is the Representation Statement required by FRAP  
4 3-2(b).

5 DATED this 1st day of November, 2021.

6  
7 ROBERT W. FERGUSON  
Attorney General

8  
9 s/Carl P. Warring  
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**PROOF OF SERVICE**

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 1st day of November, 2021, at Spokane, Washington.

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s/Carl P. Warring

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 6. Representation Statement**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>*

**Appellant(s)** (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, Todd Belitz, Jake Jensen, Art Dollard, John Everly

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Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

---

**Appellee(s)** (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

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*To list additional parties and/or counsel, use next page.*

*Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)*

Continued list of parties and counsel: *(attach additional pages as necessary)*

**Appellants**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

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Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

**Appellees**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

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Name(s) of party/parties:

Name(s) of counsel (if any):

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CARL P. WARRING  
1116 W Riverside, Suite 100  
Spokane, WA 99201  
(509) 456-3123

**THE HONORABLE STANLEY A. BASTIAN**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal  
corporation; the CITY OF  
SPOKANE, a municipal  
corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, a state  
commission; RAY MAYCUMBER,  
Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief  
Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at  
the Ferry County Sheriffs Office;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice

NO. 2:20-cv-00250-RMP

NOTICE OF APPEAL

NOTICE OF APPEAL

1

ATTORNEY GENERAL OF WASHINGTON  
West 1116 Riverside Avenue  
Spokane, WA 99201-1194  
(509) 456-3123

1 Training Commission Basic Law  
 2 Enforcement Academy; ART  
 3 DOLLARD, Police Officer at the  
 4 Spokane Police Department and  
 5 TAC Officer at the Washington  
 6 State Criminal Justice Training  
 7 Commission Basic Law  
 8 Enforcement Academy; JAKE  
 9 JENSEN, Police Officer at the  
 10 Spokane Police Department and  
 11 TAC Officer at the Washington  
 12 State Criminal Justice Training  
 13 Commission Basic Law  
 14 Enforcement Academy; and SUE  
 15 RAHR, Executive Director of the  
 16 Washington State Criminal Justice  
 17 Training Commission,

18 Defendants.

19 Notice is hereby given that WASHINGTON STATE CRIMINAL JUSTICE  
 20 TRAINING COMMISSION, CITY OF SPOKANE, SUE RAHR, RICK BOWEN,  
 21 TODD BELITZ, JAKE JENSEN, ART DOLLARD and JOHN EVERLY,  
 22 defendants in the above captioned matter, hereby appeal to the United States Court  
 of Appeals for the Ninth Circuit from the October 8, 2021 Order Denying  
 Defendants' Motion for Partial Summary Judgment (ECF No. 33). Defendants  
 appeal is taken as a matter of right pursuant to 28 U.S.C. § 1291 and the collateral  
 order doctrine, *see Tuuamalemalu v. Greene*, 946 F.3d 471 (9th Cir. 2019), where

1 the District Court's order denied them immunity from suit provided by RCW  
2 43.101.390.

3 Attached as Appendix A is the Representation Statement required by FRAP  
4 3-2(b).

5 DATED this 1st day of November, 2021.

6  
7 ROBERT W. FERGUSON  
Attorney General

8  
9 s/Carl P. Warring  
CARL P WARRING, WSBA No. 27164  
KATHERINE A. MCNULTY, WSBA No. 48448  
10 Assistant Attorneys General  
11 Attorney for Defendants Washington State  
Criminal Justice Training Commission, City of  
12 Spokane, Sue Rahr, Rick Bowen, John Everly,  
Art Dollard, Jake Jensen, & Todd Belitz  
13 1116 W Riverside, Suite 100  
Spokane, WA 99201  
14 (509) 456-3123  
[Carl.Warring@atg.wa.gov](mailto:Carl.Warring@atg.wa.gov)

**PROOF OF SERVICE**

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Allison R. Foreman	<a href="mailto:allison@fhbzlaw.com">allison@fhbzlaw.com</a>
Nathan J. Arnold	<a href="mailto:nathan@cajlawyers.com">nathan@cajlawyers.com</a>
Emanuel Jacobowitz	<a href="mailto:Manny@cajlawyers.com">Manny@cajlawyers.com</a>
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Mary Rathbone	<a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 1st day of November, 2021, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring

CARL P WARRING, WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington State  
Criminal Justice Training Commission,  
City of Spokane, Sue Rahr, Rick Bowen,  
John Everly, Art Dollard, Jake Jensen, &  
Todd Belitz  
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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 6. Representation Statement**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>*

**Appellant(s)** (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, Todd Belitz, Jake Jensen, Art Dollard, John Everly

Name(s) of counsel (if any):

Carl P. Warring, Katherine A. McNulty

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Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

---

**Appellee(s)** (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

John J. Cruz

Name(s) of counsel (if any):

Nathan J. Arnold, Emanuel Jacobowitz, Allison R. Foreman

Address: 2791 First Ave, Ste 200, Seattle, WA 98121; 124 N Wenatchee Ave, Ste 200, Wenatchee, WA 98801

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*To list additional parties and/or counsel, use next page.*

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Continued list of parties and counsel: *(attach additional pages as necessary)*

**Appellants**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

**Appellees**

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Oct 08, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; CITY OF  
REPUBLIC, a municipal corporation;  
CITY OF SPOKANE, a municipal  
corporation; WASHINGTON STATE  
CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission;  
RAY MAYCUMBER, Ferry County  
Sheriff; AMY ROOKER, Ferry  
County Chief Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at the  
Ferry County Sheriff's Office; RICK  
BOWEN Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; ART

NO: 2:20-CV-250-RMP

ORDER DENYING DEFENDANTS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

DOLLARD, Police Officer at the  
Spokane Police Department and TAC  
Officer at the Washington State  
Criminal Justice Training  
Commission Basic Law Enforcement  
Academy; JAKE JENSEN, Police  
Officer at the Spokane Police  
Department and TAC Officer at the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; TODD  
BELITZ, Police Officer at the  
Spokane Police Department and TAC  
Officer at the Washington State  
Criminal Justice Training  
Commission Basic Law Enforcement  
Academy; and SUE RAHR,  
Executive Director of the Washington  
State Criminal Justice Training  
Commission,

Defendants.

BEFORE THE COURT, without oral argument, is a Motion for Partial  
Summary Judgment, ECF No. 21, by Defendants Washington State Criminal Justice  
Commission (“Commission”), City of Spokane, Sue Rahr, Rick Bowen, John  
Everly, Art Dollard, Jake Jensen, and Todd Belitz (collectively “Defendants”). The  
Court has reviewed the parties’ submissions with respect to the motion, the  
remaining record, the relevant law, and is fully informed. *See* ECF Nos. 21; 22; 29–  
32.

/ / /

/ / /

## EVIDENTIARY OBJECTIONS

As an initial matter, the Court must determine the appropriate scope of the evidentiary record at summary judgment. Therefore, the Court preliminarily considers Plaintiff's failure to file a statement of disputed material facts and Defendants' objection to Plaintiff's proffered exhibit as unauthenticated hearsay.

### *Statement of Disputed Material Facts*

Plaintiff refutes Defendants' factual allegations, but Plaintiff's response to the present motion did not include a statement of disputed material facts to address which material facts preclude summary judgment, as is required by Local Civil Rule 56(c)(1)(B). A party must support an assertion that a fact is genuinely disputed by "citing to particular parts of materials in the record," including depositions, documents, and affidavits or declarations. Fed. R. Civ. P. 56(c)(1). Where a party fails to properly address another party's assertion of fact as required by Rule 56(c), the court may, among other things, "give an opportunity to properly support or address the fact" or "consider the fact undisputed for purposes of the motion." Fed. R. Civ. P. 56(e)(1)–(2); *see also* L. Civ. R. 56(e) ("The Court may consider a fact undisputed and admitted unless controverted by the procedures set forth in L. Civ. R. 56(c).").

However, the assumption of Defendants' undisputed facts does not automatically entitle Defendants to summary judgment. *See, e.g., Hamilton v. Keystone Tankship Corp.*, 539 F.2d 684, 686 (9th Cir. 1976) (reversing summary

1 judgment for the moving party, despite absence of opposition or statements of  
2 genuine issues of fact by the opponent, because “the movant’s papers on their face  
3 are clearly insufficient to support a motion for summary judgment”).

#### 4 *Authentication and Hearsay*

5 Separately, Defendants object to consideration of Exhibit A to Plaintiff’s  
6 Declaration in support of his response opposing the present motion, ECF No. 31-1.  
7 Defendants argue that the document is unauthenticated hearsay and contains  
8 inadmissible opinions by a lay witness. ECF No. 32 at 3–4 n.2.

9 At summary judgment, the Court is concerned with whether “the material  
10 cited to support or dispute a fact cannot be presented in a form that would be  
11 admissible in evidence.” Fed. R. Civ. P. 56(c)(2). The Court focuses on the  
12 admissibility of the evidence’s contents rather than its form. *Fraser v. Goodale*, 342  
13 F.3d 1032, 1037 (9th Cir. 2003). Therefore, a party need not “produce evidence in a  
14 form that would be admissible at trial, as long as the party satisfies the requirements  
15 of Federal Rule[] of Civil Procedure 56.” *Block v. City of Los Angeles*, 253 F.3d  
16 410, 419 (9th Cir. 2001). Evidentiary objections for authentication and hearsay may  
17 be overruled when the evidence could be presented in an admissible form at trial.  
18 *See Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d  
19 936, 964 n.7 (9th Cir. 2011) (“Rule 56 is precisely worded to exclude evidence only  
20 if it’s clear that it cannot be presented in an admissible form at trial.”); *see also*  
21 *Lawrence v. City & Cty. of San Francisco*, 258 F. Supp. 3d 977, 986 (N.D. Cal.

1 2017) (overruling hearsay and authentication challenges to police reports where their  
2 contents could be made admissible through direct testimony).

3 Exhibit A appears to include emails between City of Republic Police Chief  
4 Loren Culp and certain defendants in this matter. ECF No. 31-1 at 2–8. Plaintiff  
5 notes he was included on the email string dated June 29, 2017, which attached all of  
6 Chief Culp’s “information, notes and emails” regarding Plaintiff’s “file.” *Id.* at 3.  
7 Plaintiff declares the documents are true and correct copies of the email he received  
8 and Chief Culp’s report. ECF No. 31 at 5.

9 The Court overrules Defendants’ objection to Exhibit A because it could be  
10 admissible at trial after proper authentication. To the extent the document contains  
11 hearsay, the Court finds that their contents could be elicited through direct testimony  
12 at trial. *See, e.g., Fraser*, 342 F.3d at 1037 (noting the author of a diary could  
13 “testify to all the relevant portions of the diary from her personal knowledge”).  
14 Furthermore, and as will be discussed below, the Court finds that Defendants have  
15 failed to show they are entitled to partial summary judgment as a matter of law  
16 regardless of the Court’s consideration of Chief Culp’s emails and report.

17 Having disposed of Defendants’ procedural objections, the Court finds that  
18 the facts provided in Defendants’ Statement of Material Facts and the evidentiary  
19 record put forth by the parties will serve as the factual record for purposes of this  
20 motion.

**BACKGROUND**

The following facts are derived from Defendants’ Statement of Material Facts, ECF No. 22, and Plaintiff’s Verified Complaint, ECF No.31-2, unless otherwise noted. As indicated above, the Court will treat Defendants’ Statement of Material Facts as undisputed. To the extent Defendants dispute facts raised in Plaintiff’s Verified Complaint, the Court views those facts in the light most favorable to Plaintiff. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

Plaintiff John J. Cruz began working as a police officer for the City of Republic in September 2016. ECF No. 31-2 at 4. Mr. Cruz is Hispanic and alleges that he was frequently subjected to racist comments by both colleagues and supervisors, including Deputy Austin Hershaw. *Id.* at 4–5. At some point before January 2017, Mr. Cruz reported Deputy Hershaw for sexual misconduct while on duty. *Id.* at 5. Afterwards, Mr. Cruz alleges Deputy Hershaw was furious with him. *Id.* Mr. Cruz later enrolled in the Commission’s Basic Law Enforcement Academy (“Academy”) in Spokane, which Deputy Hershaw already had completed. *Id.*

In January 2017, Deputy Hershaw returned to the Academy to pick up targets for a firearms training. *Id.* at 6. While there, he allegedly complained to Assistant Commander John Everly and Officer Art Dollard about Mr. Cruz’s “false allegations” against him. *Id.* Mr. Cruz claims that Deputy Hershaw also requested that Assistant Commander Everly and Officer Dollard treat Mr. Cruz harshly during his time at the Academy. *Id.*

1 In February 2017, Plaintiff started classes at the Academy, where he alleges  
2 that he was consistently “singled out for harsh treatment,” particularly by Officer  
3 Dollard and Assistant Commander Everly. *Id.* Specifically, Plaintiff argues that he  
4 was falsely accused of lying on multiple occasions, assaulted with pepper spray  
5 more harshly than other trainees, and generally berated and cited for rule violations  
6 when other similarly situated trainees were not. ECF Nos. 31-2 at 6–11; 29 at 4–5.

7 A few weeks into training, Plaintiff asserts that he received permission to have  
8 his daughter and his girlfriend occasionally stay with him as overnight guests. ECF  
9 No. 31-2 at 9–10. Several months later, and just three weeks before Plaintiff’s  
10 graduation from the Academy, Assistant Commander Everly and Commander Rick  
11 Bowen questioned Plaintiff about the overnight stays. *Id.* at 10. Plaintiff told the  
12 officers he had received prior approval to have overnight guests, but Assistant  
13 Commander Everly determined that Plaintiff was lying. *Id.* at 10–11. On this basis,  
14 Plaintiff was dismissed from the Academy for violating its integrity policy. ECF  
15 Nos. 31-2 at 11. His dismissal occurred in May 2017. ECF No. 22 at 2–3.

16 Plaintiff appealed his dismissal, which the Commission’s Executive Director,  
17 Sue Rahr, upheld in June 2017. ECF Nos. 22 at 3; 31-2 at 13. Following Executive  
18 Director Rahr’s decision, Mayor Koontz immediately terminated Plaintiff from the  
19 City of Republic Police Department. ECF No. 31-2 at 13. Plaintiff asserts that his  
20 dismissal was a “mystery” to him until he received emails and a report detailing  
21

1 Chief Culp’s private investigation into the matter. ECF No. 31 at 5; *see also* ECF  
2 No. 31-1 at 2–14.

3 Mr. Cruz originally filed a Complaint in King County Superior Court alleging  
4 the following six state law claims and two federal law claims against Defendants: (1)  
5 wrongful discharge in violation of public policy; (2) wrongful termination in  
6 violation of public policy, RCW 42.41.010; (3) violation of the Washington Law  
7 Against Discrimination (“WLAD”) regarding retaliation against a whistleblower,  
8 RCW 49.60.210; (4) intentional infliction of emotional distress; (5) intentional  
9 interference with a business relationship; (6) violation of WLAD based on racial  
10 discrimination, RCW 49.60.180; (7) violation of substantive due process, 42 U.S.C.  
11 § 1983; and (8) violation of procedural due process, 42 U.S.C. § 1983;. ECF No.  
12 31-2 at 14–31.<sup>1</sup>

13 For the above state law claims, Plaintiff asserts claim (1) against Executive  
14 Director Rahr; claims (1), (5), and (6) against Commander Bowen; claims (2)–(6)  
15 against Officers Dollard, Jensen, and Belitz; and all six state law claims against  
16 Assistant Commander Everly. *Id.* at 14–33. He also requests that the actions of  
17 Executive Director Rahr and Commander Bowen be imputed to their employer, the

---

18 <sup>1</sup> Plaintiff asserted the same claims as well claims for defamation and a separate  
19 violation of WLAD for racial discrimination against defendants not included in the  
20 present motion. ECF No. 31-2 at 14–33.  
21



Commission, and that the actions of the remaining defendants be imputed to their employer, City of Spokane. *Id.* at 33.

Defendants removed the matter to federal district court based on federal question jurisdiction. ECF No. 1; 28 U.S.C. §1331. Civil proceedings initiated in state court may be removed by defendants, “to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).<sup>2</sup> Accordingly, this Court has jurisdiction over this matter because Mr. Cruz raises a federal question by alleging violation of both his procedural and substantive due process rights under 42 U.S.C. § 1983. This Court also has supplemental jurisdiction over Mr. Cruz’s state law claims pursuant to 28 U.S.C. § 1367. A jury trial is set for May 2022 and discovery is scheduled to be completed by November 29, 2021. ECF No. 19 at 2, 5.

### LEGAL STANDARD

Summary judgment is appropriate where the evidence, viewed in the light most favorable to the nonmoving party, shows “that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Only disputes over facts that might affect the outcome of the

---

<sup>2</sup> Defendants originally removed this case to the Western District of Washington, but later moved to change venue. ECF No. 4. The court granted their motion and ordered the case be transferred to this Court. ECF No. 13.

1 suit will preclude the entry of summary judgment, and the disputed evidence must be  
 2 “such that a reasonable jury could return a verdict for the nonmoving party.”  
 3 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

4 The moving party “bears the initial responsibility of informing the district  
 5 court of the basis for its motion and identifying those portions of [the record] which  
 6 it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*  
 7 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Parties opposing summary judgment  
 8 must cite to “particular parts of materials in the record” establishing a genuine  
 9 dispute. Fed. R. Civ. P. 56(c)(1); *accord T.W. Elec. Serv., Inc., v. Pacific Elec.*  
 10 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

## 11 DISCUSSION

12 Defendants argue that they are statutorily immune from civil suit regarding  
 13 Plaintiff’s state law claims. *See* ECF No. 21 at 2 (citing Wash. Rev. Code “RCW”  
 14 43.101.390).<sup>3</sup> The statute at issue immunizes the Commission and individuals  
 15 acting on its behalf “in any civil or criminal action contesting or based upon  
 16 proceedings or other official acts performed in the course of their duties in the

---

18 <sup>3</sup> Defendants concede that the statutory immunity purportedly afforded to them by  
 19 RCW 43.101.390 does not extend to claims brought under 42 U.S.C. § 1983. ECF  
 20 No. 21 at 5 n.1 (citing *Wallis v. Spencer*, 202 F.3d 1126, 1144 (9th Cir. 2000)).  
 21

1 administration and enforcement of this chapter.” RCW 43.101.390(1).<sup>4</sup> The  
2 immunity provision is part of a broader statutory scheme regarding the Criminal  
3 Justice Training Commission’s education and training standards. Chapter 43.101  
4 RCW. In 1974, the Washington State Legislature created the Commission to govern  
5 the oversight and accountability of peace officers and corrections officers. *See* RCW  
6 43.101.020. The immunity provision was added to the chapter in 2001 along with  
7 several other provisions related to the certification of officers. *See* H.B. 1062, 57th  
8 Leg., 2001 Reg. Sess. (Wash. 2001) (effective Jan. 1, 2002). Defendants contend  
9 that this statutory immunity extends to civil suits brought under state law by law  
10 enforcement trainees participating in the Commission’s training academy. ECF No.  
11 21 at 5–6 (citing *Ent v. Washington State Criminal Justice Training Comm’n*, 174  
12 Wash. App. 615, 301 P.3d 468 (Wash. Ct. App. 2013)).

13 The *Ent* Court is the only state court decision that has applied RCW  
14 43.101.390 to bar a party’s civil suit against the Commission. There, a student  
15 police officer at the Commission’s training academy in Burien was forced to stand  
16 for over an hour at an inspection and graduation ceremony, causing him to faint and  
17 strike his head on the floor. *Ent*, 174 Wash. App. at 617. He sustained significant  
18 head injuries due to the fall and sued the Commission for negligence. *Id.* The trial

---

19 <sup>4</sup> The Court cites to the current version of the statute which became effect July 25,  
20 2021.  
21

1 court granted the Commission’s motion for judgment on the pleadings, citing the  
 2 statutory immunity provision under RCW 43.101.390. *Id.* at 618. On appeal, the  
 3 plaintiff argued that the statute should be interpreted as providing immunity solely  
 4 for the Commission’s certification and decertification of peace officers. *Id.* at 618–  
 5 19. The appellate court rejected the plaintiff’s argument, ruling that “[i]mmunity  
 6 unambiguously applies to chapter 43.101 RCW in its entirety.” *Id.* at 619.<sup>5</sup>

7 Turning to the Commission’s actions, the court considered whether the events  
 8 at issue fell within the purview of the immunity statute. The court determined that  
 9 the legislature granted the Commission “broad authority to develop and implement  
 10 curriculum necessary for its training programs.” *Id.* at 622 (citing RCW  
 11 43.101.080(8)–(13)). As a result, the *Ent* Court gave deference to the Commission’s  
 12 discretionary decisions for its graduation ceremonies and concluded that the

13  
 14 <sup>5</sup> The *Ent* Court’s interpretation of former RCW 43.101.390 appears to be  
 15 consistent with the current version of the statute, which added a new subsection to  
 16 the statute’s already-broad grant of immunity:

17 (2) Without limiting the generality of the foregoing, the  
 18 commission and individuals acting on behalf of the  
 19 commission are immune from suit in any civil action based  
 20 on the certification, denial of certification, suspension, or  
 21 other action regarding decertification of peace officers,  
 reserve officers, or corrections officers.

RCW 43.101.390(2).

1 inspection and ceremony were within the scope of the Commission’s immunized  
2 activity. *Id.*

3 In line with *Ent*, Defendants argue they are entitled to statutory immunity  
4 because Mr. Cruz’s state law claims “arise from [his] participation in, and dismissal  
5 from, the Commission’s [Academy].” ECF No. 21 at 7. Plaintiff contends that the  
6 statute grants immunity only for “official acts performed in the course of  
7 [Defendants’] duties” and that it does not apply to racially discriminatory or  
8 retaliatory conduct. ECF No. 29 at 3 (internal quotation marks omitted).

9 Plaintiff also moves for an opportunity to conduct discovery in this case  
10 pursuant to Federal Rule of Civil Procedure 56(d), indicating that he would seek  
11 discovery to ascertain the extent to which Defendants departed from training or  
12 disciplinary protocols, “their treatment of similarly-situated trainees, . . . and the  
13 terms of individual Defendants’ dual employment by the Academy and the City of  
14 Spokane.” ECF Nos. 29 at 10; 30 at 3. Defendants counter that additional discovery  
15 is unnecessary because their motives “do not affect the operation of RCW  
16 43.101.390 as a matter of law.” ECF No. 32 at 7–8 n. 4. Therefore, the Court first  
17 considers whether a genuine issue of material fact exists regarding the applicability  
18 of the immunity statute to this case.

19 Plaintiff raises several significant distinctions from the facts in *Ent* to those  
20 raised in this case. First, the scope of the immunized activity in *Ent* was partially  
21 premised on the deferential policy decisions owed to the Commission in overseeing

1 inspection and graduation ceremonies. 174 Wash. App. at 622. Here, in contrast,  
2 Defendants broadly assert that the conduct at issue involved “official acts” of  
3 Defendants “as part of the administration” of Academy training regardless of the  
4 ulterior motives behind the acts. ECF No. 32 at 5. But Defendants do not cite to  
5 any of the Academy or Commission protocols to support the assertion that their  
6 conduct involved “official acts performed in the course of their duties.” RCW  
7 43.101.390(1).

8 A second distinction from *Ent* concerns the parties involved. The plaintiff in  
9 *Ent* sued only the Commission, but Mr. Cruz asserts claims against the Commission,  
10 Executive Director Rahr, Commander Bowen, and individual officers employed by  
11 the City of Spokane, as well as other non-moving defendants. In reviewing the  
12 evidentiary record, a material question of fact remains as to whether individual  
13 defendants were acting “on behalf of the Commission” or on their own personal  
14 animus throughout Plaintiff’s training and ultimate dismissal from the Academy.  
15 RCW 43.101.390(1). Relatedly, Defendants leave completely unaddressed how an  
16 immunity statute for the Commission and individuals acting on its behalf extends to  
17 Defendant City of Spokane.

18 Turning to the request for additional discovery under Rule 56(d), a party must  
19 show that ““(1) it has set forth in affidavit form the specific facts it hopes to elicit  
20 from further discovery; (2) the facts sought exist; and (3) the sought-after facts are  
21 essential to oppose summary judgment.”” *Midbrook Flowerbulbs Holland B.V.*

1 *Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 619–20 (9th Cir. 2017) (quoting  
2 *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827  
3 (9th Cir. 2008)). A continuance to conduct discovery is warranted only where the  
4 movant has diligently pursued prior discovery opportunities. *Big Lagoon Rancheria*  
5 *v. California*, 789 F.3d 947, 955 (9th Cir. 2015) (en banc). Here, Plaintiff’s counsel  
6 submitted a declaration stating that more time is needed before the discovery cutoff  
7 to examine Defendants’ motives “for their departures from normal training  
8 procedure” as well as their prior communications with non-moving Defendants  
9 Deputy Hershaw and Detective Rainer. ECF No. 30 at 3.

10 The Court recognizes that discovery has not yet closed in this case. As  
11 discussed above, the “official acts” and “duties” of Defendants related to Plaintiff’s  
12 participation in the Academy is relatively fact-intensive, and the parties have yet to  
13 conduct written discovery and depositions. Moreover, Defendants’ citation to one  
14 case applying the immunity statute in a negligence suit does not illustrate they are  
15 automatically entitled to immunity here. Nor do Defendants assert that Plaintiff  
16 failed to diligently pursue discovery.

17 At this stage, a material issue of fact as to the applicability of RCW  
18 49.101.390 to Defendants’ alleged misconduct precludes partial summary judgment  
19 in this case. Specifically, Defendants fail to show that they are automatically  
20 immunized from suit, regardless of their alleged discriminatory or retaliatory intent.  
21 The scope of immunized activity in *Ent* involved the actions of academy staff that,

1 though potentially negligent, were well within the scope of the Commission's  
2 activity. 174 Wash. App. at 622. Here, however, it remains unclear whether the  
3 misconduct Plaintiff alleges could be considered part of the Commission's  
4 curriculum necessary for implementing its training programs. The Court further  
5 finds that Mr. Cruz has shown that he requires an opportunity to obtain additional  
6 information, such as the extent to which Defendants departed from official training  
7 and dismissal procedures. ECF No. 30 at 3. The Court finds that these facts are  
8 especially relevant to the scope of the immunized activity in this case.

9 Therefore, the Court denies with leave to renew Defendants' Motion for  
10 Partial Summary Judgment, after discovery is conducted in this matter. *See* Fed. R.  
11 Civ. P. 56(d).

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Defendants' Motion for Partial Summary Judgment, **ECF No. 21** is  
14 **DENIED** with leave to renew as indicated above.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
16 Order and provide copies to counsel.

17 **DATED** October 8, 2021.

18  
19 *s/ Rosanna Malouf Peterson*  
ROSANNA MALOUF PETERSON  
20 United States District Judge  
21



CARL P. WARRING  
1116 W Riverside, Suite 100  
Spokane, WA 99201  
(509) 456-3123

Honorable Rosanna M. Peterson

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

JOHN J. CRUZ,

NO. 2:20-cv-00250-RMP

Plaintiff,

v.

**DEFENDANTS' REPLY  
MEMORANDUM**

9/3/2021  
Without Oral Argument

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal  
corporation; the CITY OF  
SPOKANE, a municipal  
corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, a state  
commission; RAY MAYCUMBER,  
Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief  
Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at  
the Ferry County Sheriffs Office;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; ART  
DOLLARD, Police Officer at the  
Spokane Police Department and

DEFENDANTS' REPLY  
MEMORANDUM

1

ATTORNEY GENERAL OF WASHINGTON  
West 1116 Riverside Avenue  
Spokane, WA 99201-1194  
(509) 456-3123

TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; JAKE JENSEN, Police Officer at the Spokane Police Department and TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; TODD BELITZ, Police Officer at the Spokane Police Department and TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; and SUE RAHR, Executive Director of the Washington State Criminal Justice Training Commission,

Defendants.

## I. INTRODUCTION

The plain language of RCW 43.101.390 makes the Criminal Justice Training Commission (“CJTC”) and its agents immune from “any civil or criminal action.” Yet, Cruz asks the Court to limit the immunity afforded by RCW 43.101.390 to exclude the state law civil claims he has brought against the CJTC Defendants.<sup>1</sup> To support his request, Cruz argues that the phrase “official acts performed in the course of their duties” precludes coverage for suits

---

<sup>1</sup> The CJTC Defendants are the moving Defendants and include: Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, and Todd Belitz.

1 involving retaliation, and other intentional torts, because such conduct can never  
 2 be “official acts performed in the course of their duties.” Cruz’s interpretation of  
 3 RCW 43.101.390 is wrong for at least two reasons. First, it runs afoul of the most  
 4 basic rule of statutory construction – if accepted, the interpretation would render  
 5 express language in RCW 43.101.390 meaningless. Second, Cruz’s  
 6 interpretation also relies on a rationale (drawing comparisons to language in  
 7 unrelated statutes) that has previously been rejected by Washington Courts. Both  
 8 of these defects are described more fully below.

## 9 II. FACTS

10 In his response to the CJTC Defendants’ motion, Cruz conceded that the  
 11 facts alleged by the CJTC Defendants are undisputed facts. ECF No. 29 at 3:14-  
 12 15. After doing so, Cruz suggests that additional facts are necessary for context.<sup>2</sup>

13  
 14  
 15 <sup>2</sup> Cruz fails to provide a Statement of Disputed Material Facts as required  
 16 by LCR 56(c)(1)(B) that sets forth disputed material facts that preclude summary  
 17 judgment. Accordingly, the Defendants cannot provide a Reply Statement Of  
 18 Material Facts Not In Dispute as contemplated by LCR 56(c)(1)(C). However,  
 19 pursuant to Fed. R. Civ. P. 56(c)(2), the CJTC Defendants object to consideration  
 20 of Ex. 1 to the Declaration of John Cruz (ECF No. 31-1) for the following  
 21 reasons. First, Cruz lacks the personal knowledge to authenticate the exhibit. ER  
 22 602, ER 901. Second, the exhibit contains hearsay and hearsay within hearsay.

ECF No. 29 at 3:15. Cruz's additional facts serve only to illustrate that the acts that form the basis of his legal claims were acts done by the CJTC Defendants while serving in their roles as members of CJTC. ECF No. 31 at 3:13-5:2. For example, Cruz complains that he was treated improperly during his Basic Law Enforcement Academy training related to (1) his submission of a report; (2) having a cell phone on during an exercise; (3) how he was pepper sprayed during an exercise; and (4) for rule violations regarding dress code, parking and overnight visitors. ECF No. 31 at 3:13-5:2.

### III. ARGUMENT

#### **RCW 43.101.390 Bars Cruz's State Law Claims Against The CJTC Defendants**

In its current form, RCW 43.101.390 provides,

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

RCW 43.101.390. This immunity extends to claims brought against CJTC by law enforcement trainees participating in the Basic Law Enforcement Academy, as illustrated by *Ent v. Washington State Criminal Justice Training Comm'n*, 174 Wash. App. 615, 301 P.3d 468 (2013). In this regard, Cruz unwittingly

---

ER 802, 805. Third, the exhibit contains statements that are inadmissible opinion by a lay witness. ER 701.

acknowledges that the misconduct he alleges against the CJTC Defendants is based upon official acts of the CJTC Defendants while he was a cadet at the Basic Law Enforcement Academy. ECF No. 29 at 4:14-5:19. The acts he complains of are unmistakably acts done as part of the administration of the Basic Law Enforcement Academy. ECF No. 29 at 4:14-17 (criticized regarding the submission of a report), 4:18-19 (criticized for having a cell phone on during an exercise), 5:5-6 (being pepper sprayed during an exercise), 5:6-9 (criticized for violating dress code). His description of the motives behind those acts does not change the circumstances in which the acts occurred. Accordingly, the plain language of RCW 43.101.390 precludes Cruz's state law claims against the CJTC Defendants.

Cruz seeks to avoid the obvious result of RCW 43.101.390 by arguing the statute's grant of immunity does not extend to his state law claims. ECF No. 29 at 6:4-11:13. Specifically, Cruz points to a phrase in RCW 43.101.390 – "official acts performed in the course of their duties" – and claims the phrase is intended to except theories of retaliation (and or other intentional torts) from the statute's grant of immunity. Cruz's reading of RCW 43.101.390 is flawed for at least two reasons.

First, Cruz's interpretation would render express language in RCW 43.101.390 meaningless. This would violate the maxim expressed in *Ralph v. State Dep't of Nat. Res.*, 182 Wash.2d 242, 343 P.3d 342 (2014):

1 [courts] cannot “simply ignore” express terms. [Courts] must  
 2 interpret a statute as a whole so that, if possible, “no clause,  
 sentence, or word shall be superfluous, void, or insignificant.”

3 *Ralph*, 182 Wash.2d at 248 (internal citations omitted).<sup>3</sup> Specifically, Cruz urges  
 4 a reading that would exclude intentional misconduct theories from the immunity  
 5 provided. ECF No. 29 at 7:5-10:8. His reading, if accepted, would leave little-  
 6 to-no room for immunity from criminal actions. Yet, the Legislature expressly  
 7 listed suits premised on criminal actions as falling within the statute’s grant of  
 8 immunity. Thus, Cruz’s suggested reading of RCW 43.101.390 must be  
 9 erroneous.

10 Second, Cruz relies on the interpretation of marginally similar phrases in  
 11 unrelated criminal statutes to suggest RCW 43.101.390 is more limited than its  
 12 plain language suggests. ECF No. 29 at 7:5-9:9. Washington Courts have  
 13 previously rejected this approach to statutory interpretation. *See Auto Value*  
 14 *Lease Plan, Inc., v. Am. Auto Lease Brokerage, Ltd.*, 57 Wash. App. 420, 423,  
 15 788 P.2d 601 (1990) (if differing statutes using same term are *not* in pari materia,  
 16 there is no basis for inferring a legislative intent to import the definition of the  
 17 term from one statutory scheme into the other); *see also Graham v. State Bar*  
 18 *Ass’n*, 86 Wash.2d 624, 626, 548 P.2d 310 (1976) (holding that statute calling

---

19  
 20 <sup>3</sup> When interpreting a state statute, federal courts look to state rules of  
 21 statutory construction. *Ass’n des Eleveurs de Canards et d’Oies du Quebec v.*  
 22 *Harris*, 729 F.3d 937, 945 (9th Cir. 2013).

1 the bar association an “agency of the state” did not use “agency” in the same  
 2 sense as in a separate unrelated statute regarding audits of state agencies). And  
 3 this approach should be rejected here to avoid the absurd result that would follow.  
 4 Namely, the effectiveness of RCW 43.101.390 would be reduced to a pleadings  
 5 game. Any plaintiff who wanted to side-step the immunity provided by the  
 6 Legislature would need only plead claims of discrimination or other intentional  
 7 misconduct under Cruz’s interpretation. Surely this was not the Legislature’s  
 8 intent in enacting RCW 43.101.390.

9 No factual dispute exists;<sup>4</sup> Cruz’s state law claims against the CJTC  
 10 Defendants arise from Cruz’s participation in, and dismissal from, the CJTC’s  
 11

12 \_\_\_\_\_  
 13 <sup>4</sup> Cruz, in the body of his responsive pleading, purports to request a  
 14 continuance if the Court intends to grant the CJTC Defendants’ motion. ECF No.  
 15 29 at 10:9-19. However, Cruz fails to analyze the four considerations the Ninth  
 16 Circuit has outlined relating to motions to continue: “(1) the “diligence” of the  
 17 party seeking the continuance; (2) whether granting the continuance would serve  
 18 any useful purpose; (3) the extent to which granting the continuance would have  
 19 inconvenienced the court and the opposing party; and (4) the potential prejudice.”  
 20 *State Farm Fire & Cas. Co. v. Willison*, 833 F. Supp. 2d 1200, 1211, (D. Haw.  
 21 2011). Cruz could not meet these standards even if he had tried. No useful  
 22 purpose exists for allowing Cruz to conduct discovery as to the CJTC

1 Basic Law Enforcement Academy. As a matter of law, RCW 43.101.390 affords  
2 each of the CJTC Defendants immunity from Cruz's state law claims.

3 **IV. CONCLUSION**

4 For the reasons discussed above, the Court should grant the Defendants'  
5 motion for summary judgment and dismiss with prejudice Cruz's state law claims  
6 brought against the CJTC Defendants.

7 DATED this 17th day of August, 2021.

8  
9 ROBERT W. FERGUSON  
Attorney General

10  
11 s/Carl P. Warring  
CARL P. WARRING, WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington State  
Criminal Justice Training Commission,  
12 City of Spokane, Sue Rahr, Rick Bowen,  
13 John Everly, Art Dollard, Jake Jensen, &  
14 Todd Belitz  
1116 W Riverside, Suite 100  
15 Spokane, WA 99201  
(509) 456-3123  
16 [carl.warring@atg.wa.gov](mailto:carl.warring@atg.wa.gov)

17  
18  
19  
20 \_\_\_\_\_  
21 Defendant's motives. The CJTC Defendant's motives do not affect the operation  
22 of RCW 43.101.390 as a matter of law.



**PROOF OF SERVICE**

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Allison R. Foreman	<a href="mailto:allison@fhbzlaw.com">allison@fhbzlaw.com</a>
Nathan J. Arnold	<a href="mailto:nathan@cajlawyers.com">nathan@cajlawyers.com</a>
Michael McFarland, Jr.	<a href="mailto:mmcfarland@ecl-law.com">mmcfarland@ecl-law.com</a>
Jerry Moberg	<a href="mailto:jmoberg@mrklawgroup.com">jmoberg@mrklawgroup.com</a>
Mary Rathbone	<a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 17th day of August, 2021, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring

CARL P WARRING, WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington State  
Criminal Justice Training Commission,  
City of Spokane, Sue Rahr, Rick Bowen,  
John Everly, Art Dollard, Jake Jensen, &  
Todd Belitz  
1116 W Riverside, Suite 100  
Spokane, WA 99201  
(509) 456-3123  
[carl.warring@atg.wa.gov](mailto:carl.warring@atg.wa.gov)



Office; RICK BOWEN, Commander )  
of the Washington State Criminal )  
Justice Training Commission Basic )  
Law Enforcement Academy; JOHN )  
EVERLY, Police Officer at the )  
Spokane Police Department and )  
Assistant Commander of the )  
Washington State Criminal Justice )  
Training Commission Basic Law )  
Enforcement Academy; ART )  
DOLLARD, Police Officer at the )  
Spokane Police Department and TAC )  
Officer at the Washington State )  
Criminal Justice Training Commission )  
Basic Law Enforcement Academy; )  
JAKE JENSEN, Police Officer at the )  
Spokane Police Department and TAC )  
Officer at the Washington State )  
Criminal Justice Training Commission )  
Basic Law Enforcement Academy; )  
TODD BELITZ, Police Officer at the )  
Spokane Police Department and TAC )  
Officer at the Washington State )  
Criminal Justice Training Commission )  
Basic Law Enforcement Academy; and )  
SUE RAHR, Executive Director of the )  
Washington State Criminal Justice )  
Training Commission, )  
) )  
Defendants. )

1 John J. Cruz declares as follows:

2 1. I am an adult citizen of the State of Washington, am competent to testify and  
3 hereby testify of my personal knowledge unless otherwise indicated.

4 2. I am the Plaintiff in the above-captioned matter.

5 3. In 2017, I was a rookie police officer in the Republic, WA Police Department. As  
6 such, I attended the Basic Law Enforcement Academy run by Defendant Washington  
7 State Criminal Justice Training Commission.

8 4. A month earlier, I had run afoul of Defendants Rainier and Hershaw, who were  
9 then law enforcement officers for the Ferry County Sheriff's Department.

10 5. Detective Rainier and Deputy Hershaw, and others, frequently harassed me based  
11 on my Hispanic heritage.

12 6. Matters took a turn for the worse after I reported Hershaw for having sex in an  
13 official vehicle while on duty, a report which enraged Hershaw.

14 7. When I attended the Academy starting a month later, Hershaw's former trainers,  
15 Defendants Dollard and Everly, embarked on a campaign of harassment and oppression  
16 against me which culminated in getting me dismissed for supposed dishonesty. Here  
17 are some examples.

18 8. Officer Dollard publicly and falsely accused me of not having submitted a  
19 required report and of lying about it.

1 9. Officer Dollard publicly berated me for having my cell phone on during an  
2 exercise, something he did not criticize other equally 'guilty' trainees for.

3 10. Officer Dollard ordered me, and only me, not to sit or lean, while I was  
4 recovering from a leg injury.

5 11. Officer Dollard assaulted me with pepper spray under the guise of a training  
6 exercise, spraying me far more thoroughly than the other trainees and gloating about it  
7 afterwards in my earshot.

8 12. Assistant Commander Everly singled me out for criticism for nonexistent rule  
9 violations, like not wearing a jacket, something he did not sanction other equally 'guilty'  
10 trainees for. No regulation or rule required a jacket.

11 13. Assistant Commander Everly singled me out for nominal violations such as  
12 parking in the wrong spot, something he did not sanction other equally 'guilty' trainees  
13 for.

14 14. Finally, Assistant Commander Everly singled out me for violating another non-  
15 existent policy by having my daughter stay overnight on a weekday; and when I  
16 reported that when I had asked for leave to host her, I had been informed only that  
17 overnight guests were allowed, without restriction, Assistant Commander Everly  
18 declared without evidence that I was lying and terminated me, not for having a guest,  
19

1 but for dishonesty. I was not even allowed to consult a lawyer before that hearing,  
2 although I asked if I could.

3 15. The hostility shown by those officers, and the way they went out of their way  
4 and outside normal training procedure to drive me out, was a mystery to me, until I  
5 heard from my former Chief at the Republic Police Department, Loren Culp.

6 16. Chief Culp copied me on an email he sent to the Mayor attaching his official  
7 report of his investigation into the circumstances of my ouster. A true and correct copy  
8 of the email and report are attached hereto as Exhibit A. Chief Culp reports that he  
9 interviewed Deputy Hershaw and noted that Deputy Hershaw at first lied during the  
10 investigation (the very thing I was dismissed for supposedly doing) but then admitted  
11 that he had talked with Assistant Commander Everly and Officer Dollard shortly before  
12 I began my Academy training. Chief Culp also reports that Deputy Hershaw, even  
13 months later, was plainly still enraged at me, blaming me for breaking silence about his  
14 unprofessional conduct, and accusing me of lying. Although Deputy Hershaw denies  
15 having talked with Everly and Dollard about me in this way, or asking them to retaliate,  
16 it's not much of a stretch to infer that he did so back in early 2017, when his emotional  
17 wounds were even fresher than during his interview with Chief Culp.

1 17. The above facts are also set forth in my Verified Complaint in this matter, a true  
2 and correct copy of which is attached hereto as Exhibit A and is incorporated herein for  
3 more context and detail.

4 I declare under penalty of perjury of the laws of the State of Washington that the  
5 statements contained herein are true and accurate to the best of my knowledge and  
6 belief.

7 Executed this 3d day of August 2021 in Tacoma, Washington.

8 

9 \_\_\_\_\_  
10 John J. Cruz

**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2021, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to those registered with CM/ECF, including the following:

Michael E. McFarland, Jr.  
Email: MMcFarland@ecl-law.com

Jerry Moberg Mary Rathbone  
Email: jmoberg@mrklawgroup.com  
Email: mrathbone@mrklawgroup.com

Carl P. Warring  
Email: CarlW@atg.wa.gov

EXECUTED this 3d day of August 2021 at Seattle, Washington.

/s/Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA No. 39991



# EXHIBIT A

Info ref Cruz

From: Loren Culp (officerlculp@rcabletv.com)

To: republicmayor@outlook.com;

Cc: jjcruz30@yahoo.com;

Date: Thursday, June 29, 2017 3:26 PM

Mayor Koontz,

Attached is all the information, notes and emails I have in regards to John Cruz. I am CC him in this email so all you will need to get him is what is in your file.

John, if any of these attachments don't open or you have a problem with reading them let me know and I will help make it happen.

Loren Culp

Police Chief

Republic WA

Phone: 509-775-3132

Fax: 509-775-2812

NOTE: This email is privileged and confidential and is intended solely for the use of the individual or entity named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this communication is prohibited. If you have received this email in error, please immediately notify the sender by telephone or return mail, and immediately delete the message from your inbox and delete folders.

Chief:

My apologies. I placed Sue's response on letterhead and inadvertently addressed it to Wade instead of Loren Culp. I will update the letter and get a new one out to you upon Sue's return after the Independence Day holiday. Again, I'm sorry for the confusion.

Thank you,

Blank

**Marisa O'Neill**

Executive Assistant

Policy & Accreditation Manager

Office of the Executive Director

Criminal Justice Training Commission

Direct line: 206/835-7372

Email: [maoneill@cjtc.state.wa.us](mailto:maoneill@cjtc.state.wa.us)

Website: [www.cjtc.state.wa.us](http://www.cjtc.state.wa.us)

Preferred pronouns: she/her

---

**From:** Loren Culp [<mailto:officerlculp@rcabletv.com>]

**Sent:** Friday, June 23, 2017 3:27 PM

**To:** Sue Rahr <[srahr@cjtc.state.wa.us](mailto:srahr@cjtc.state.wa.us)>

**Subject:** Re: Decision on Recruit Expulsion

Thank you.

Sergeant Loren Culp

Republic Police

On Jun 23, 2017, at 15:06, Sue Rahr <[srahr@cjtc.state.wa.us](mailto:srahr@cjtc.state.wa.us)> wrote:

Chief Culp,

Please see the attached letter containing an explanation of my decision to uphold the expulsion of John Cruz.

Sue Rahr, Executive Director

WA State Criminal Justice Training Commission

---

**From:** Loren Culp [<mailto:officerlculp@rcabletv.com>]

**Sent:** Friday, June 23, 2017 10:00 AM

**1-ER - 50**

**To:** Sue Rahr  
**Subject:** RE: HIGHLY CLASSIFIED INFORMATION

Email would be fine, thank you!

**Loren Culp**

**Police Chief**

Republic WA

Phone: 509-775-3132

Fax: 509-775-2812

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---

**From:** Sue Rahr [<mailto:srahr@cjtc.state.wa.us>]  
**Sent:** Friday, June 23, 2017 9:59 AM  
**To:** [officerlculp@rcabletv.com](mailto:officerlculp@rcabletv.com)  
**Cc:** Marisa A. O'Neill  
**Subject:** RE: HIGHLY CLASSIFIED INFORMATION

Chief Culp,

As I write this I'm still reviewing the statements of 28 recruits from the class and other documents from the investigation. Master TAC Officer Steve Grossfeld spent two days earlier this week interviewing recruits and completing his portion of the investigation. I have two more statements to review before making my final decision. I expect to do that before the end of the day and will notify you of my decision. I appreciate your patience with the time it has taken to conduct a thorough and fair investigation.

I this email the best way to notify you or do you prefer a phone call?

Thank you.

Sue Rahr, Executive Director

WA State Criminal Justice Training Commission

<Letter to Chief Culp.pdf>

Commander Bowen is included in this thread and I am formally asking, now both of you, for an answer. I told you in my initial email that I am doing a review and report to the Mayor of Republic in regards to this matter.

Thank you,

**Loren Culp**

**Police Chief**

Republic WA

Phone: 509-775-3132

Fax: 509-775-2812

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---

**From:** Everly, John [mailto:jevery@spokanepolice.org]  
**Sent:** Thursday, June 01, 2017 2:39 PM  
**To:** Loren Culp  
**Cc:** Rick Bowen  
**Subject:** RE: Recruit Cruz

Chief Culp

From your response it appears you are conducting an investigation/inquiry. If this is the case I would ask you make your inquiries through my Chain of Command which is Commander Bowen.

Sergeant John Everly / Assistant Commander BLEA Spokane / 509-742-8145(desk) 509-795-4858(cell) / [jeverly@spokanepolice.org](mailto:jeverly@spokanepolice.org)

---

**From:** Loren Culp [<mailto:officerlculp@rcabletv.com>]  
**Sent:** Thursday, June 01, 2017 11:10 AM  
**To:** Everly, John <[jeverly@spokanepolice.org](mailto:jeverly@spokanepolice.org)>  
**Cc:** 'Rick Bowen' <[rbowen@cjtc.state.wa.us](mailto:rbowen@cjtc.state.wa.us)>  
**Subject:** RE: Recruit Cruz

It is only a detailed request if it did happen. I would like to know please.

**Loren Culp**

**Police Chief**

Republic WA

Phone: 509-775-3132

Fax: 509-775-2812

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---

**From:** Everly, John [<mailto:jeverly@spokanepolice.org>]  
**Sent:** Wednesday, May 31, 2017 3:48 PM  
**To:** Loren Culp  
**Cc:** Rick Bowen  
**Subject:** RE: Recruit Cruz

Chief

I will finish my write up tomorrow and forward it to Burien. I will check to see if I can CC you a copy of my investigation or if they would rather forward it to you through their channels.

In regards to your second item I would like to know what the reason is for such a detailed request?

Sergeant John Everly / Assistant Commander BLEA Spokane / 509-742-8145(desk) 509-795-4858(cell) / [jeverly@spokanepolice.org](mailto:jeverly@spokanepolice.org)

**From:** Loren Culp [<mailto:officerlculp@rcabletv.com>]  
**Sent:** Wednesday, May 31, 2017 12:44 PM  
**To:** Everly, John <[jeverly@spokanepolice.org](mailto:jeverly@spokanepolice.org)>  
**Subject:** RE: Recruit Cruz

Sergeant Everly,

John Cruz was placed on Administrative leave today pending my review and report to the Mayor of Republic. When can I expect to receive the recorded interviews you did with Cruz after the assault took place?

Also, Have you or any of your staff had any contact, verbal or otherwise, with anyone from the Ferry County Sheriff's Office at any time in regards to John Cruz, if so, who, when and what did the contact entail?

Please reply via email.

Thank you,

**Loren Culp**

**Police Chief**

Republic WA

Phone: 509-775-3132

Fax: 509-775-2812

NOTE: This email is privileged and confidential and is intended solely for the use of the individual or entity named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution, or copying of this communication is

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**From:** Everly, John [<mailto:jeverly@spokanepolice.org>]  
**Sent:** Thursday, May 25, 2017 2:49 PM  
**To:** Loren Culp  
**Cc:** Dollard, Arthur; Daddato, David; Rick Bowen  
**Subject:** Recruit Cruz

Chief Culp

Recruit Cruz had an issue today with his mother, girlfriend and daughter. This issue escalated to the point where Recruit Cruz alleged he was assaulted by his mother. This occurred in the west parking lot of the Academy. The Spokane Police Department was notified by TAC Officer Daddato and an officer responded and took the report. Recruit Cruz has taken the rest of the class day off so he can obtain an Order of Protection against his mother. At this point no arrests have been made. The case number for this incident is 2017-20097324, and the investigating officer is Officer Martin. If you have any questions please contact me.

Sergeant John Everly / Assistant Commander BLEA Spokane / 509-742-8145(desk) 509-795-4858(cell) / [jeverly@spokanepolice.org](mailto:jeverly@spokanepolice.org)

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## Attachments

- . (15.31KB)
- 060917 Letter.doc (22.50KB)
- Chief Culp Report.doc (41.50KB)
- Cruz statement, Recruits and Officer Statements.pdf (2.47MB)
- Cruz to desk duty.pdf (287.15KB)
- Equipment turn in.pdf (213.26KB)
- Kersten Letter of support Cruz.pdf (204.08KB)
- Notes John Investigation.doc (38.50KB)
- . (35.25KB)



Chief Loren Culp

Republic Police

All times Approximate;

I have been contacted by the Academy Commander, Sergeant Everly, multiple times about minor issues with Recruit Cruz. Each time, Sergeant Everly stated words to the effect; "we are not looking for a reason to terminate Cruz, if that was the case we could have done it" I was asked to come to the Academy by the Commander for a counseling session with Recruit Cruz and Sergeant Everly. I went there and met with them. Cruz was counseled on the phone with me the evening prior to that meeting. The conversation was about him following direction from the Academy Staff no matter what and taking criticism from them whether he felt it was warranted or not. I talked to Cruz alone after Sgt Everly left the room.

Cruz felt they were treating him far different than the other recruits; being verbally harsh toward him and embarrassing him in front of his class. He was the only one of 7 or 8 recruits, who had forgotten their jackets, to be hollered at one day; he was the only one of 4 or 5 recruits to be verbally berated by his TAC officer for leaning on a chair during a DT class. His class was lined up in a half circle with Cruz in the middle and they were told to stand there and look at Cruz for the rest of the class. I counseled him at that time and told him, no matter what they say or do to him, short of physical assault, to take it and suck it up, words to that effect. Cruz accepted my counseling and to my knowledge there hasn't been another issue with that.

On 5/25/17, I received a call from Cruz. He told me that his mom came to the Academy and was trying to take Riley, his daughter, who was there with Cruz's girlfriend. Cruz did not allow her to take his daughter and his mom physically assaulted Cruz, making a big scene. The police were called. Cruz told me a few weeks ago, approximately, that his mom maybe in the area and she may try to take his daughter. Cruz said that the school, that Riley attends here in Republic, had been notified and only pre-authorized

people were able to take Riley from school. Cruz just wanted me to know ahead of time if there was a problem.

On 5/25/17 I also received an email from Sgt Everly about the situation with Cruz's mom and the "alleged" assault. Cruz's mom also called me telling me things that happened when Cruz was 7 years old. She seemed very bitter and said that John should not be a cop. She told me she was estranged from Cruz for 10 years and not allowed to see his children. She seemed very bitter.

Cruz called me later, perhaps the next day and talked to me about being interrogated by Sgt. Everly and a lieutenant from Spokane PD. Cruz told me that the recorded conversation was not only about his integrity but also about the DV assault that happened with his mother. Cruz said he was asked about family staying at the motel. He said he was truthful and answered the questions. He felt they were looking for a reason to kick him out of the Academy.

On the afternoon of 5/30/17 I returned a phone call from Sgt. Everly. He told me that Cruz was going to be dismissed from the Academy for lying during the interview that was recorded. He told me that Cruz stated that his TAC officer told him he could have family stay at the motel anytime even during the week, just not on a regular basis. Apparently the Tac Officer denied saying that and Cruz was going to be dismissed from the Academy because Sgt Everly came to the conclusion that Cruz was lying about the conversation. He told me that the TAC Officer stated he did not recall the exact conversation but he has talked about weekends only, with other recruits. Cruz told me that he remembers the conversation with the TAC Officer about family staying at the hotel and while coming out the door, ran into his roommate and relayed the information to his roommate.

I asked Everly if this was just a case of two people having a different version or recollection of the same conversation. I explained that you can gather several people in a location, even police officers, have a conversation or give out information and often, later, all of their memory or report on the situation will be different, even if only slightly. Because two people remember different things being said does not make one or both a liar. I asked him if that was the case and he said no, Recruit Cruz lied. He told me I could call the Academy Commander and gave me that phone number for Burien. I later

called Everly back and told him that I did not find a need to call Burien at this time; that he and his staff have spent a lot of time with Cruz in the academy and I know there have been issues with him. If he felt he should not be a police officer because of it then I respected that. He made it clear to me that the past dealings with Cruz were handled and over, this issue stood on its own and was the sole reason for his being dropped from the Academy. I requested all of the recorded conversations/interviews with Cruz and any reports. Sgt. Avery told me he would get them to me, possibly on a thumb drive.

On 5/31/17 I sent an email to Sgt Everly asking when I should expect to receive the information.

I found out from Cruz that this conversation with the TAC Officer, about family staying at the hotel, occurred about 4 months ago. Cruz said he relayed the information to his roommate within minutes of having the conversation. Cruz said he did not tell a lie and would never tell a lie. That was his recollection of the conversation and what he told his roommate at the time. Cruz never tried to hide the fact that his girlfriend and daughter have visited and stayed in the room. He told me about one instance during the week, just recently, when Brittany, his girlfriend and his daughter, Riley, had stayed the night at his room. He told his TAC Officer that he had to get his daughter from the room and something about medical needs for her, because she was sick. The TAC Officer did not question him about the daughter being at his room during the week, it wasn't an issue.

Because he was kicked out of the Academy, on 5/31/17 Cruz was put on unpaid administrative leave by Mayor Koontz. He met with myself and Mayor Koontz at City Hall and gave us the dismissal document from the Academy. I had Cruz turn in all weapons and equipment issued to him while I investigate this. I later met Cruz and he turned in the equipment. I told Cruz I was going to look into this because it seemed very unfair to him that he would be called a liar for recalling something different from a conversation from 4 months ago.

On 5/31/17 at 1320 hours I called the office of Academy Commander Rick Bowen at 206-835-7330. I left a message for him with his secretary. I also asked her what course of action I have if I want Cruz back in an academy to finish his last 3 weeks.

She gave me a brief overview of that. She told me that she would have Bowen call me back.

Bowen called me back and told me I need to request through his boss if I want to dispute the release from the Academy. On May 31 I emailed Everly and asked if anyone from Ferry Co had contacted him or his staff about Cruz. He refused to answer that question and referred me to his Chain of Command, Bowen. Bowen had already been CC'd in the prior emails. I replied and Bowen was included in email. Bowen called dispatch trying to contact me and I called him back. He said his secretary said I had just called and was rude to her. He said he understands that I may be upset but he doesn't want me to take it out on his staff. I informed Bowen they must have me mixed up with someone else because I never called. He said he would look into who called.

Bowen told me the only information I was going to get was the information into the dismissal of Cruz. He said he is not going to "jam up" any of his officers, referring to my request about Ferry County Contact. I told him I was not trying to jam anyone up I was just doing a thorough investigation so I could give my report to the Mayor. He said he would only give me information on the investigation into Cruz at the Academy unless I told him why I wanted to know the information I requested about Ferry County and contact with the Spokane Academy. I told him why;

Before Cruz went to the Academy he had brought forward information that was given to him from a Ferry County Dispatcher about a married Ferry County Deputy having sex with another married woman, the Dispatcher's sister in law, while on duty. This information was given to a trusted Deputy at Ferry County by Cruz and the Dispatcher. According to what I know about this, an investigation was done and the female would not make a statement or denied that it happened and the investigation was closed. This Deputy that was accused is very mad at Cruz and may have gone to the Spokane Academy and may know the staff there. It is not a great reach to think of the possibility, that this Deputy or someone else from Ferry County, may have "put a bug in the ear" of someone they know from the Academy in Spokane, hence the allegations from Cruz and other recruits, that Cruz was treated differently and unfairly by the Academy Staff, IF he was branded as a liar from the get go.

Bowen told me that he would find out the information I requested and let me know. He also told me that Cruz will cause me problems in the future and that I should take a step back and look at this and the problems Cruz has had in the Academy. Bowen said that his staff at the Academy did not like Cruz and neither did most of the students but his staff works with and trains people they don't like all the time or words to that effect. He told me that all the issues stand on their own and were dealt with at the time, the reason Cruz was let go from the Academy was because he lied.

On 6/2/17 I received a letter from Cruz's mom filled with allegations against him. In the letter she admits to hitting him during the confrontation at the Academy. On 6/3/217 I asked Cruz about the allegations; Cruz denied the allegations. He said that his mother has "issues" and that is why she was out of his life for 10 years. Cruz said that he has talked to other family members and that they will write statements about their mother and in support of John Cruz. I told him to get me copies as soon as possible.

On 6/5/17 I asked Ferry County Sheriff for permission to interview Deputy Hershaw and Deputy Rainer, he granted me that permission. Sheriff Maycumber said he had reviewed a protection order for Cruz against his mother. I explained what was going on to Sheriff Maycumber; he agreed it seemed to be severe punishment for what occurred. I later interviewed Deputy Rainer. Rainer said he did not have any contact with anyone at the Academy in regards to Cruz. I received an email with audio files and PDF documents from the Academy. I forwarded the email to Mayor Koontz. The PDF was upside down, Amy from CJTC emailed me back and said she turned the documents right side up, I checked and they were still upside down. I emailed her back on 6/6/17. I have no way to download or print the documents. I have no way to download the audio files. I read as best I could the upside down documents and I did listen to the audio.

On 6/6/17 I saw Deputy Hershaw at the Sheriff's Office. I told him that I had the Sheriff's permission to interview him but would wait until the Sheriff was present. Hershaw, a few minutes later came up to me and said that he talked to Sheriff Maycumber about me interviewing him and the Sheriff told him he did not need to be there. I interviewed Hershaw outside the Sheriff's Office. I asked him where he went to the Academy and he said Spokane. I asked him who his TAC Officers were and he said Everly and Dollard. I asked him if he has had contact with anyone from the Academy since graduation. At first he said no, then he said he talked with Everly and Dollard when he picked up targets after his firearm class, possibly the first of this year or the last of 2016 but he did not talk to them in regards to Cruz. With his permission, I

recorded that interview. After answering my questions, Hershaw went on an approximately 5 minute speech about how he does not like Cruz. His hatred toward Cruz is still strong and evident even after 6 months since Cruz was involved in bringing forth allegations from a Dispatcher about Hershaw having sex on duty.

It is highly likely and I suspect it did happen, that while at the Academy "picking up targets" that Hershaw gave information to the Tac officers about Cruz making "false" allegations against him and his hatred of Cruz. That happening would correspond with the treatment and "none of the Staff liked Cruz" (Commander Bowens words) from the very beginning of the Academy, by the Academy Staff.

I was told in an email on 5/19/17 from TAC Daddoto that "He has isolated himself from the majority of the class and appears to have only a few people he keeps close". I found that to be contrary to Cruz's personality. Cruz is outgoing and personable. I talked with Cruz about that and he said it was untrue, that he regularly goes out after class with many of his fellow students and is friends with many of them. Cruz told me he has letters of support from multiple students. Some of them want to remain anonymous for obvious reasons.

Signed DATE, at Republic, WA.

Police Chief  
Loren Culp  
C-1 Republic Police

# EXHIBIT B



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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
 municipal corporation; the CITY OF SPOKANE,  
 a municipal corporation; the WASHINGTON  
 STATE CRIMINAL JUSTICE TRAINING  
 COMMISSION, a state commission; RAY  
 MAYCUMBER, Ferry County Sheriff; AMY  
 ROOKER, Ferry County Chief Civil Deputy;  
 AUSTIN HERSHAW, Police Officer at the Black  
 Diamond Police Department; PATRICK  
 RAINIER, Detective at the Ferry County  
 Sheriff's Office; RICK BOWEN, Commander of  
 the Washington State Criminal Justice Training  
 Commission Basic Law Enforcement Academy;  
 JOHN EVERLY, Police Officer at the Spokane  
 Police Department and Assistant Commander  
 of the Washington State Criminal Justice  
 Training Commission Basic Law Enforcement  
 Academy; ART DOLLARD, Police Officer at the  
 Spokane Police Department and TAC Officer at  
 the Washington State Criminal Justice Training  
 Commission Basic Law Enforcement Academy;  
 JAKE JENSEN, Police Officer at the Spokane  
 Police Department and TAC Officer at the  
 Washington State Criminal Justice Training  
 Commission Basic Law Enforcement Academy;  
 TODD BELITZ, Police Officer at the Spokane  
 Police Department and TAC Officer at the

**NO.**

VERIFIED COMPLAINT  
FOR DAMAGES

VERIFIED COMPLAINT FOR DAMAGES - 1

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Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
and SUE RAHR, Executive Director of the  
Washington State Criminal Justice Training  
Commission,

Defendants.

COMES NOW the Plaintiff, JOHN J. CRUZ, by and through his attorneys of record,  
Allison R. Foreman of Foreman, Appel, Hotchkiss, Zimmerman & Bauscher, PLLC, and  
Nathan J. Arnold of Cloutier Arnold Jacobowitz PLLC, and alleges and states as follows:

### **I. PARTIES, JURISDICTION, AND VENUE**

1.1 Plaintiff John J. Cruz ("Plaintiff") resides in King County, Washington. He was born  
on June 1, 1979.

1.2 Defendant Ferry County ("Ferry County") is a county located in the State of Wash-  
ington. Its county seat is located in Republic, Ferry County, Washington.

1.3 Defendant the City of Republic ("Republic") is a municipal corporation located in  
Ferry County, Washington.

1.4 Defendant the City of Spokane ("Spokane") is a municipal corporation located in  
Spokane County, Washington.

1.5 Defendant the Washington State Criminal Justice Training Commission ("CJTC")  
is a state commission formed under the laws of the State of Washington. Its office and  
primary place of business are located in King County, Washington.

1.6 Defendant Ray Maycumber ("Sheriff Maycumber") is the Sheriff of Ferry County,  
Washington. On information and belief, Sheriff Maycumber currently resides in Ferry  
County, Washington.

1.7 Defendant Amy Rooker ("Deputy Rooker") is the Chief Civil Deputy of Ferry  
County, Washington. On information and belief, Deputy Rooker currently resides in Ferry  
County, Washington.

1.8 Defendant Austin Hershaw ("Deputy Hershaw") is a police officer employed by the  
Black Diamond Police Department. At all times relevant to the events complained of  
herein, Deputy Hershaw was a deputy sheriff employed by the Ferry County Sheriff's

VERIFIED COMPLAINT FOR DAMAGES - 2

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1 Office. On information and belief, Deputy Hershaw currently resides in King County,  
2 Washington.

3 1.9 Defendant Patrick Rainer ("Detective Rainer") is a detective employed by the Ferry  
4 County Sheriff's Office. On information and belief, Detective Rainer currently resides in  
5 Ferry County, Washington.

6 1.10 Defendant Rick Bowen ("Commander Bowen") is the Commander of the CJTC  
7 Basic Law Enforcement Academy ("BLEA" or "Academy") in Spokane. On information  
8 and belief, Commander Bowen currently resides in Spokane County, Washington.

9 1.11 Defendant John Everly ("Assistant Commander Everly") is a police officer em-  
10 ployed by the Spokane Police Department ("Spokane PD") and the Assistant Commander  
11 of the CJTC BLEA in Spokane. On information and belief, Assistant Commander Everly  
12 currently resides in Spokane County, Washington.

13 1.12 Defendant Art Dollard ("Officer Dollard") is a police officer employed by the Spo-  
14 kane PD and a TAC Officer at the CJTC BLEA in Spokane. On information and belief,  
15 Officer Dollard currently resides in Spokane County, Washington.

16 1.13 Defendant Jake Jensen ("Officer Jensen") is a police officer employed by the Spo-  
17 kane PD and a TAC Officer at the CJTC BLEA in Spokane. On information and belief,  
18 Officer Jensen currently resides in Spokane County, Washington.

19 1.14 Defendant Todd Belitz ("Officer Belitz") is a TAC Officer at the CJTC BLEA located  
20 in Spokane. On information and belief, Officer Belitz currently resides in Spokane County,  
21 Washington.

22 1.15 Defendant Sue Rahr ("Executive Director Rahr") is the Executive Director of the  
23 CJTC. On information and belief, Executive Director Rahr currently resides in King  
24 County, Washington.

25 1.16 Jurisdiction and venue are proper herein pursuant to RCW 4.12.020(3).

## 26 **II. FACTS SUPPORTING CLAIMS**

27 2.1 Plaintiff re-alleges each and every allegation as set forth above.

28 2.2 Plaintiff was employed as a police officer by the Republic Police Department ("Re-  
29 public PD") from September 1, 2016 until June 23, 2017.

30 2.3 Plaintiff is Hispanic.

31 2.4 Plaintiff was frequently the butt of racial jokes and the subject of derogatory, racist

1 comments during his employment. These jokes and comments were made by police of-  
2 ficers employed by the Republic PD and employees of the Ferry County Sheriff's Office.

3 2.5 Detective Rainer made business cards for Plaintiff that included a Mexican som-  
4brero emoji and a large mustache.

5 2.6 Deputy Talon Venturo ("Deputy Venturo"), a deputy sheriff employed by the Ferry  
6 County Sheriff's Office, often called Plaintiff "Brown Sugar," making a racist reference to  
7 the color of Plaintiff's skin, while Deputy Venturo was on duty.

8 2.7 Deputy Hershaw and Detective Rainer also made racially-specific remarks and  
9 jokes about Plaintiff while they were on duty.

10 2.8 Deputy Hershaw and Detective Rainer are close friends.

11 2.9 Deputy Hershaw and Deputy Venturo are cousins.

12 2.10 Deputy Hershaw attended the CJTC BLEA in Spokane before 2017. His instruc-  
13tors at the CJTC BLEA were Officer Dollard and Assistant Commander Everly.

14 2.11 On information and belief, Detective Rainer also attended the CJTC BLEA in Spo-  
15kane before 2017.

16 2.12 Plaintiff signed up for the CJTC BLEA for the course beginning in February 2017.

17 2.13 In January 2017, prior to Plaintiff's start date at the CJTC BLEA in Spokane, Brit-  
18tany A. Mumford, a dispatcher at the Ferry County Dispatch Center, told Plaintiff that Dep-  
19uty Hershaw had sexual relations with one Randi Torchesky on the back of his patrol  
20vehicle while on duty and in uniform on July 31, 2016.

21 2.14 Plaintiff immediately reported Deputy Hershaw's sexual misconduct to Detective  
22Rainer. He did so in good faith, believing that Ms. Mumford was telling the truth. Ms.  
23Mumford confirmed to Detective Rainer that she had heard about it directly from Ms.  
24Torchesky.

25 2.15 Detective Rainer subsequently called Ms. Torchesky and interviewed Deputy Her-  
26shaw, both of whom denied the incident.

27 2.16 Detective Rainer communicated Plaintiff's report about Deputy Hershaw's sexual  
28misconduct to Sheriff Maycumber.

29 2.17 Sheriff Maycumber refused to investigate Deputy Hershaw's sexual misconduct  
30and instead referred the investigation to the Washington State Patrol.

31 2.18 Deputy Hershaw was furious at Plaintiff for reporting his sexual misconduct to

1 Detective Rainer.

2 2.19 Later in January 2017, Deputy Hershaw returned to the CJTC BLEA in Spokane  
3 to pick up targets for firearms training in Ferry County. On information and belief, Deputy  
4 Hershaw told Assistant Commander Everly and Officer Dollard that Plaintiff had made  
5 false allegations against him and asked that they treat Plaintiff harshly during his time at  
6 the CJTC BLEA in Spokane. Deputy Hershaw made this request in order to get revenge  
7 on Plaintiff for reporting his sexual misconduct to Detective Rainer. His request was also  
8 motivated by racism against Plaintiff.

9 2.20 On information and belief, Detective Rainer also contacted staff and instructors at  
10 the CJTC BLEA in Spokane and asked them to treat Plaintiff harshly during his time at  
11 there. Detective Rainer made this request because he was Deputy Hershaw's close friend  
12 and wanted to punish Plaintiff for getting his friend in trouble. His request was also moti-  
13 vated by racism against Plaintiff.

14 2.21 Plaintiff started classes at the CJTC BLEA in Spokane in February 2017.

15 2.22 Plaintiff was consistently singled out for harsh treatment at the CJTC BLEA, espe-  
16 cially by Officer Dollard and Assistant Commander Everly.

17 2.23 During the third or fourth week of the CJTC Academy, Officer Dollard asked Plain-  
18 tiff in front of the entire BLEA class whether Plaintiff had submitted a required letter de-  
19 scribing his experience at the CJTC Academy to Loren Culp, Chief of the Republic Police  
20 Department ("Chief Culp"). Plaintiff verified that he had done so. Officer Dollard ques-  
21 tioned Plaintiff's integrity and accused him of lying. Officer Dollard demanded to see a  
22 copy of the letter, which Plaintiff produced. Officer Dollard then berated Plaintiff, again in  
23 front of the entire class, about the length of the letter, which Officer Dollard found unsatis-  
24 factory. No other recruits were interrogated or publicly criticized about their letters to their  
25 respective superiors.

26 2.24 As the CJTC Academy progressed, Plaintiff continued to be singled out for harsh  
27 treatment. During defensive tactics training, Plaintiff's mobile phone alarm went off inside  
28 his bag. Plaintiff shut off the alarm and returned to training. The class was in good spirits  
29 and Plaintiff was smiling. Officer Dollard noticed Plaintiff's expression and began yelling  
30 at Plaintiff and demanded to know why Plaintiff was smiling. Without waiting for an an-  
31 swer, Officer Dollard continued to berate and humiliate Plaintiff in front of the class. He

VERIFIED COMPLAINT FOR DAMAGES - 5

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1 demanded to know why Plaintiff's mobile phone was inside his bag and whether Plaintiff  
2 had permission for the phone to be there.

3 2.25 Many other recruits had their mobile phones ring or sound alarms during trainings.  
4 No other recruits were yelled at or berated by Officer Dollard or other instructors for it.

5 2.26 Plaintiff was on light duty during the CJTC Academy due to a previous leg injury.  
6 His medical providers recommended that he take a seat every 15 to 30 minutes.

7 2.27 During one class, Plaintiff sat down to relieve his injured leg. Officer Dollard yelled  
8 at Plaintiff in front of the entire class, "Cruz, get off your ass!" Officer Dollard ordered  
9 Plaintiff to stand in front of the class and teach it. Three other recruits were sitting down  
10 on the other side of the room but Officer Dollard did not yell at them or force them to stand  
11 in front of the class and teach it.

12 2.28 Plaintiff sustained a shoulder injury during rock drills and requested to see a doctor.  
13 Officer Dollard refused to allow Plaintiff to leave the CJTC Academy for several hours.  
14 Plaintiff, in pain, finally asked Assistant Commander Everly for permission to see a doctor.  
15 Assistant Commander Everly granted permission. Officer Dollard was visibly upset that  
16 Assistant Commander Everly had allowed Plaintiff to see a doctor for his shoulder injury.  
17 The doctor diagnosed Plaintiff with an AC joint separation and possible rotator cuff tear.  
18 Assistant Commander Everly later told Plaintiff that he had been mistaken in giving him  
19 permission to see a doctor. When Plaintiff asked Officer Belitz how the CJTC BLEA nor-  
20 mally handled recruit injuries, he looked away from Plaintiff and replied, with disgust, "We  
21 shut our mouths and we don't say anything."

22 2.29 Plaintiff was hazed by his instructors during his oleoresin capsicum (pepper spray)  
23 certification. Plaintiff did not go through the certification with the rest of the class because  
24 he was on light duty at the time. Instead, he was certified on a later date. He was singled  
25 out for harsh treatment right from the start of the certification. All other recruits were per-  
26 mitted to video record their pepper spray certifications, but Plaintiff was not permitted to  
27 do so. All other recruits were encouraged to cheer for their classmates during their pepper  
28 spray certifications. Prior to Plaintiff's certification, Officer Jensen instructed the other  
29 recruits not to look at Plaintiff, cheer him on or show any signs of encouragement. Officer  
30 Jensen told them, referring to Plaintiff, "He is a grown man and doesn't need a cheer  
31 section."

VERIFIED COMPLAINT FOR DAMAGES - 6

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1 2.30 Immediately before Plaintiff was sprayed, an instructor asked him whether he had  
2 a ride home. While Plaintiff was answering the instructor's question, Officer Belitz inter-  
3 rupted him and said, "Why don't you stop complaining. All you've done is complain the  
4 last fifteen weeks. Shut up and do as you're told." Plaintiff replied, "Yes, sir."

5 2.31 All other recruits were sprayed by one (1) instructor. Plaintiff was sprayed by two  
6 (2): Officers Dollard and Belitz. Plaintiff was sprayed more than any other recruit. He was  
7 covered from the top of his head to below his chest.

8 2.32 After being sprayed, Plaintiff was required to complete an obstacle course. Plaintiff  
9 injured the arch and heel of his foot while doing so.

10 2.33 After completing the obstacle course, Plaintiff was resting against a table with sev-  
11 eral other recruits. Officer Dollard yelled at Plaintiff to get off the table. He did not yell at  
12 the other recruits, who continued to rest against the table. Plaintiff complied with Officer  
13 Dollard's command and sat down in a chair to relieve his injured foot. Officer Dollard  
14 shouted at Plaintiff again. Officer Dollard ordered the other recruits to form a semi-circle  
15 and forced Plaintiff to stand in front of the class like that for the rest of the class period.

16 2.34 Officer Dollard approached another instructor after spraying Plaintiff, placed his  
17 arm around the instructor's shoulder and said, referring to their having sprayed Plaintiff,  
18 "We got him good." Officer Dollard and the instructor smiled and bumped fists.

19 2.35 Officer Dollard continued to berate and embarrass Plaintiff as the CJTC Academy  
20 progressed. He often raised Plaintiff's relationships and family life in front of the class.  
21 When Plaintiff asked to keep his personal matters private, Officer Dollard refused and  
22 continued to publicly criticize Plaintiff.

23 2.36 Plaintiff's initial partner at the academy was Recruit Jose Perez ("Recruit Perez"),  
24 a police officer employed by the Tonasket Police Department. Recruit Perez is also His-  
25 panic. Plaintiff and Recruit Perez had a good friendship and often communicated together  
26 in Spanish. Staff and/or instructors at the CJTC BLEA removed Recruit Perez as Plaintiff's  
27 partner and replaced him with a monolingual Caucasian recruit. No reason was given for  
28 the replacement.

29 2.37 Other recruits commented on the unfair treatment that Plaintiff received.

30 2.38 Recruit Matthew Ponusky observed that Plaintiff "was yelled at and embarrassed  
31 in front of the entire class for seemingly trivial things." Recruit Ponusky believed "[t]his

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1 was highly unprofessional and not a good example.” It felt “wrong” to Recruit Ponusky  
2 and made him “view certain staff members in a negative way.”

3 2.39 Another recruit stated that Officer Dollard “made it his mission to make [Plaintiff’s]  
4 experience a living hell.”

5 2.40 Although Officer Dollard had more contact with Plaintiff, Assistant Commander Ev-  
6 erly caused even more trouble for Plaintiff.

7 2.41 On the second day of the CJTC Academy, Assistant Commander Everly called  
8 Plaintiff into his office and chastised him for not having a jacket. A jacket was not required  
9 attire. Several other recruits did not have jackets, but none of them were chastised.

10 2.42 Midway through the program, Plaintiff received a call from Chief Culp. Chief Culp  
11 told Plaintiff that Assistant Commander Everly had called him and informed him that Plain-  
12 tiff did not follow CJTC Academy rules. As an example of this alleged misconduct, Assis-  
13 tant Commander Everly told Chief Culp that Plaintiff parked in the front row at the CTJC  
14 BLEA, which was against the rules. Other recruits frequently parked in the front row of  
15 the CTJC BLEA during the course of the CJTC Academy. On information and belief,  
16 Assistant Commander Everly did not call their supervisors and complain that those recruits  
17 did not follow CJTC Academy rules.

18 2.43 During firearms training one day, Plaintiff returned his duty ammunition to the  
19 classroom as he had been instructed. Assistant Commander Everly and Officer Dollard  
20 both accused Plaintiff of returning to retrieve forgotten equipment. Plaintiff had not forgot-  
21 ten any equipment in the classroom. No other recruits were accused of forgetting equip-  
22 ment or lying about trips back to the classroom.

23 2.44 Soon after Plaintiff’s pepper spray certification, Assistant Commander Everly con-  
24 tacted Chief Culp again to complain about Plaintiff.

25 2.45 This pattern of discriminatory conduct culminated in Plaintiff being dismissed from  
26 the program by Assistant Commander Everly on the thinnest of pretexts.

27 2.46 During the second or third week of the Academy, Plaintiff had noticed that another  
28 recruit’s wife stayed with her husband at the hotel where CJTC housed the recruits.

29 2.47 The next day, Plaintiff visited the office of TAC Officer David Daddatto (“Officer  
30 Daddatto”) and asked whether he could also have guests stay with him overnight at the  
31 hotel. Officer Daddatto told Plaintiff that short-term guests were permitted if the guests



1 followed all rules and Plaintiff's roommate consented. Officer Daddatto did not say any-  
2 thing about guests being allowed only on certain days.

3 2.48 Plaintiff's roommate, Jordan Ulrich ("Recruit Ulrich"), was standing directly outside  
4 the door to Officer Daddatto's office during that exchange. Plaintiff exited Officer Dad-  
5 datto's office and immediately asked Recruit Ulrich whether he minded if Plaintiff had oc-  
6 casional overnight guests. Recruit Ulrich said that it was okay with him.

7 2.49 For the rest of Plaintiff's stay, Plaintiff's minor daughter, visited Plaintiff overnight  
8 every other weekend and some weekdays. Plaintiff's long-term girlfriend also sometimes  
9 stayed overnight on weekdays.

10 2.50 Many other recruits at the CJTC BLEA had wives, girlfriends, and family members  
11 stay with them overnight at the hotel during the course of the CJTC Academy, on week-  
12 ends and weekdays.

13 2.51 Many recruits in previous classes at the CJTC BLEA had wives, girlfriends, and  
14 family members stay with them overnight at the hotel during the course of the CJTC Acad-  
15 emy, on weekends and weekdays.

16 2.52 On May 26, 2017, Plaintiff was removed from training and escorted into a room  
17 with Commander Bowen and Assistant Commander Everly. The men questioned Plaintiff  
18 about his daughter's overnight stays at the hotel during the CJTC Academy.

19 2.53 Plaintiff asked for an advocate or representative. Commander Bowen and Assis-  
20 tant Commander Everly misinformed him that he was not entitled to one and did not give  
21 him an opportunity to retain one.

22 2.54 CJTC did not contact Chief Culp or anyone else at the Republic PD before inves-  
23 tigating Plaintiff.

24 2.55 Plaintiff answered the questions truthfully and accurately.

25 2.56 Commander Bowen and Assistant Commander Everly asked Plaintiff about his  
26 conversation with Officer Daddatto about overnight guests during the second or third week  
27 of the CJTC Academy. Plaintiff relayed his recollection of the conversation. He reported  
28 that Officer Daddatto told him that short-term overnight guests were permitted if the guests  
29 followed all rules and the recruit's roommate consented. Plaintiff added that Officer Dad-  
30 datto had not distinguished between guests on the weekends and guests during the week  
31 when he described the guest policy to Plaintiff.



1 2.57 Separately, Assistant Commander Everly asked Officer Daddatto about his con-  
2 versation with Plaintiff about overnight guests. Officer Daddatto did not recall the conver-  
3 sation. Officer Daddatto said that he had told other recruits that guests were only permit-  
4 ted on weekends. He did not recall saying this to Plaintiff.

5 2.58 Assistant Commander Everly also interviewed Recruit Ulrich about Plaintiff's con-  
6 versation with Officer Daddatto about overnight guests. Recruit Ulrich said that Plaintiff  
7 had asked his permission to have overnight guests immediately after Plaintiff's conversa-  
8 tion with Officer Daddatto. Recruit Ulrich said that Plaintiff had not distinguished between  
9 weekend guests and guests during the week when he asked Recruit Ulrich's permission  
10 to have overnight guests.

11 2.59 On the basis of these interviews, Assistant Commander Everly purportedly con-  
12 cluded that Plaintiff had lied in his account of his conversation with Officer Daddatto.

13 2.60 On May 30, 2017, just three (3) weeks before graduation, Plaintiff was dismissed  
14 from the CJTC BLEA in Spokane for an alleged violation of the Academy's integrity policy,  
15 namely, that Plaintiff was found to be untruthful in his account of his conversation with  
16 Officer Daddatto about when guests could stay in the hotel overnight. Plaintiff was advised  
17 to collect his things and report to Chief Culp.

18 2.61 Assistant Commander Everly told Chief Culp that the alleged integrity violation de-  
19 scribed herein was the sole reason Plaintiff was dismissed from the CJTC BLEA. Everly  
20 did not find that Plaintiff had violated any other policy or rule.

21 2.62 Assistant Commander Everly never explained what he was investigating Plaintiff  
22 for in the first place, given that having overnight guests on weekdays was not considered  
23 a violation of any policy or rule.

24 2.63 Assistant Commander Everly never conducted an investigation of Plaintiff's sup-  
25 posed violation of the integrity policy.

26 2.64 Among other things, Assistant Commander Everly never sought additional evi-  
27 dence as to whether Officer Daddatto usually told other recruits that guests were permitted  
28 only on weekends.

29 2.65 On information and belief, Assistant Commander Everly told the entire class that  
30 Plaintiff was dismissed for integrity issues.

31 2.66 On May 31, 2017, Elbert Koontz, the mayor of Republic ("Mayor Koontz"), put

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1 Plaintiff on unpaid administrative leave.

2 2.67 Also on May 31, 2017, Plaintiff met with Chief Culp and Mayor Koontz and gave  
3 them the dismissal document from the CJTC BLEA. Plaintiff also turned in all weapons  
4 and equipment. Chief Culp initiated an investigation into Plaintiff's dismissal because  
5 Chief Culp thought it was unfair that Plaintiff had been deemed untruthful based on Plain-  
6 tiff's account of his conversation with Officer Daddatto, which Officer Daddatto did not  
7 even remember.

8 2.68 On that same day, Chief Culp asked Assistant Commander Everly by email  
9 whether anyone from Ferry County had contacted Assistant Commander Everly or his  
10 staff about Plaintiff. Assistant Commander Everly refused to answer and referred Chief  
11 Culp's question to Commander Bowen. Assistant Commander Everly told Chief Culp that  
12 none of the other recruits liked Plaintiff.

13 2.69 Commander Bowen flatly refused to answer Chief Culp's question about whether  
14 persons from Ferry County had contacted staff and instructors about Plaintiff.

15 2.70 Other recruits at the CJTC Academy described Plaintiff to Chief Culp as a great  
16 officer, a great partner, very knowledgeable, and worthy of their respect. They praised his  
17 strong moral character, leadership, professionalism, and dedication.

18 2.71 On June 6, 2017, with Sheriff Maycumber's permission, Chief Culp privately inter-  
19 viewed Deputy Hershaw. During the interview, Deputy Hershaw revealed that he attended  
20 the CJTC BLEA in Spokane as a recruit and that his instructors were Assistant Com-  
21 mander Everly and Officer Dollard. Deputy Hershaw told Chief Culp that he had visited  
22 the CJTC BLEA in Spokane in late January 2017 for the purpose of picking up firearms  
23 targets. He admitted that he had spoken with Assistant Commander Everly and Officer  
24 Dollard during the visit. Deputy Hershaw then spent several minutes telling Chief Culp  
25 how much he hated Plaintiff.

26 2.72 Following his interview with Deputy Hershaw, Chief Culp strongly suspected that  
27 Deputy Hershaw talked to Assistant Commander Everly and Officer Dollard about Plaintiff  
28 making sexual misconduct allegations against Deputy Hershaw during Deputy Hershaw's  
29 visit to the CJTC BLEA in Spokane in late January 2017, and asked them to treat Plaintiff  
30 harshly.

31 2.73 On June 8, 2017, Chief Culp formally appealed Plaintiff's dismissal from the CJTC

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1 BLEA in Spokane in a letter to Executive Director Rahr.

2 2.74 On June 9, 2017, Plaintiff was returned to limited duty with full pay and benefits.  
3 Plaintiff was prohibited from patrolling or responding to calls. This is known as “desk duty”  
4 among police officers.

5 2.75 On June 10, 2017, Deputy Hershaw sent a text message to Plaintiff requesting a  
6 meeting. During the meeting, Deputy Hershaw asked Plaintiff to tell Chief Culp to stop his  
7 investigation. Deputy Hershaw expressed concern that he, Deputy Hershaw, was being  
8 investigated by Chief Culp in connection with Plaintiff’s mistreatment at the CJTC Acad-  
9 emy. Deputy Hershaw repeatedly asked Plaintiff to make the investigation go away be-  
10 cause he was leaving town and did not want his family to know about the substance of the  
11 investigation.

12 2.76 On June 23, 2017, Executive Director Rahr communicated her decision to uphold  
13 the expulsion of Plaintiff from the CJTC BLEA in Spokane.

14 2.77 Chief Culp had already told Mayor Koontz that Plaintiff had a reserve certification  
15 and could be retained by the Republic PD even without completing the Academy.

16 2.78 Nevertheless, Mayor Koontz immediately terminated Plaintiff for failing to complete  
17 officer training.

18 2.79 Sometime in September 2017, Plaintiff applied for a counseling position at North-  
19 east Washington Alliance Counseling Services (“New Alliance”), a diagnostic and treat-  
20 ment center providing mental healthcare and chemical dependency treatment services in  
21 Republic. At the time of Plaintiff’s application, Ronald L. Casebeer (“Mr. Casebeer”), the  
22 Ferry County Supervisor and Designated Mental Health Professional, was responsible for  
23 hiring decisions at New Alliance.

24 2.80 Shortly after Plaintiff applied, Sheriff Maycumber contacted Mr. Casebeer and told  
25 him not to hire Plaintiff. Sheriff Maycumber told Mr. Casebeer that hiring Plaintiff would  
26 be a mistake and that if Plaintiff was hired, he would not be allowed to do crisis services  
27 at the Ferry County Sheriff’s Office. Sheriff Maycumber made negative comments about  
28 Plaintiff’s integrity and character to Mr. Casebeer.

29 2.81 Mr. Casebeer contacted John Moser of Ferry County Human Resources and  
30 asked him about Plaintiff and Sheriff Maycumber’s warning. Mr. Moser supported Plaintiff  
31 and advised Mr. Casebeer to ignore the warning.

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1 2.82 On October 2, 2017, Plaintiff was hired by New Alliance as a counselor. He agreed  
2 to a six-month probationary period.

3 2.83 Over the course of the next six (6) months, Plaintiff did his job very well. He re-  
4 ceived uniformly positive monthly reviews from supervisor Christine Lynch ("Ms. Lynch"),  
5 a licensed professional counselor at New Alliance. Plaintiff was never disciplined and  
6 never received negative feedback about his job performance.

7 2.84 In March 2018, Lynn Gulkey ("Ms. Gulkey"), Director of New Alliance, told Plaintiff  
8 that rumors were circulating about him in Ferry County. She did not identify the substance  
9 of the rumors. Ms. Gulkey cryptically added that every time she tried to look into the  
10 rumors she ran up against brick walls.

11 2.85 March 30, 2018 was Plaintiff's 180th day at New Alliance.

12 2.86 On April 2, 2018, Ms. Lynch gave Plaintiff a very positive six-month review.

13 2.87 On April 3, 2018, four (4) days after his probation ended, Ms. Gulkey abruptly ter-  
14 minated Plaintiff. Ms. Gulkey told Plaintiff that he was not being retained after his proba-  
15 tionary period because he was "not going to be a good fit."

16 2.88 Ms. Gulkey did not follow termination procedures appropriate for a non-probation-  
17 ary employee when she terminated Plaintiff.

18 2.89 In a subsequent conversation with Plaintiff, Ms. Lynch denied knowledge of why  
19 Plaintiff was fired. Ms. Lynch told Plaintiff that she, and not Ms. Gulkey, should have been  
20 the one to decide whether to hire him permanently but instead his termination "came from  
21 above." Ms. Lynch advised Plaintiff to leave Ferry County because he had enemies in the  
22 local government.

23 2.90 Over the course of the next several days, Plaintiff suffered an anxiety attack due  
24 to being targeted by Defendants in Ferry County.

25 2.91 Later during April 2018, Plaintiff discovered that Deputy Rooker and Sheriff  
26 Maycumber had told local school districts and parents that Plaintiff was not allowed to be  
27 around children. Plaintiff began receiving phone calls, texts and emails from members of  
28 the public asking him about his contact with children. Plaintiff discovered public Facebook  
29 posts calling him a liar.

### 30 **III. FIRST CAUSE OF ACTION**

#### 31 **Wrongful Termination in Violation of Public Policy**

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**(Whistleblowing)**

3.1 Plaintiff re-alleges each and every allegation as set forth above.

3.2 Washington State has a clear public policy of encouraging local government employees to disclose improper governmental actions of local government officials and employees, as articulated in RCW 42.41.010.

3.3 Plaintiff engaged in protected whistleblowing activity in January 2017 when he reported Deputy Hershaw's sexual misconduct to Detective Rainer.

3.4 Discouraging the reporting of a deputy sheriff's sexual misconduct would jeopardize the policy articulated in Paragraph 3.2 *supra* by preventing the full disclosure of improper governmental actions of local government officials and employees.

3.5 Deputy Hershaw asked Assistant Commander Everly and Officer Dollard to single out Plaintiff for harsh treatment at the CJTC BLEA in Spokane as a direct result of — and in fact as revenge for — Plaintiff's protected whistleblowing activity against Deputy Hershaw. Plaintiff was targeted for hazing and disproportionate discipline by staff and instructors at the CJTC Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as a direct result of Deputy Hershaw's malicious request.

3.6 Detective Rainer also asked staff and instructors at the CJTC BLEA in Spokane to single out Plaintiff for harsh treatment as a direct result of — and in fact as revenge for — Plaintiff's protected whistleblowing activity against Deputy Hershaw. Plaintiff was targeted for hazing and disproportionate discipline by staff and instructors at the CJTC Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as a direct result of Detective Rainer's malicious request.

3.7 The targeted hazing and disproportionate discipline endured by Plaintiff culminated in an unsubstantiated determination by Assistant Commander Everly that Plaintiff had been untruthful during the internal investigation into Plaintiff's alleged misapplication of the CJTC BLEA's purported overnight guest policy. This unsubstantiated determination resulted in Plaintiff's wrongful dismissal from the CJTC BLEA in Spokane and, a few weeks later, his wrongful termination by Mayor Koontz.

3.8 The targeted hazing and disproportionate discipline endured by Plaintiff at the CJTC BLEA in Spokane, and his wrongful dismissal therefrom, violated the respective prohibitions against retaliation and intimidation of whistleblowers in RCW 42.41.040 and

1 RCW 42.41.045. In so doing, they also violated the policy articulated in Paragraph 3.2  
2 *supra*.

3 3.9 The wrongful termination of Plaintiff from the Republic PD violated the prohibition  
4 against retaliation against whistleblowers in RCW 42.41.040. In so doing, it also violated  
5 the policy articulated in Paragraph 3.2 *supra*.

6 3.10 Assistant Commander Everly gave no other justification for Plaintiff's dismissal  
7 from the CJTC BLEA. His unsubstantiated determination of untruthfulness was the sole  
8 reason cited for Plaintiff's dismissal.

9 3.11 Mayor Koontz gave no other justification for Plaintiff's termination from the Repub-  
10 lic PD. Plaintiff's failure to complete officer training at the CJTC BLEA, which resulted  
11 from Assistant Commander Everly's unsubstantiated determination of untruthfulness, was  
12 the sole reason cited for Plaintiff's termination.

13 3.12 As a direct and proximate result of this retaliation, Plaintiff suffered damages in an  
14 amount to be proven at the time of trial.

#### 15 **IV. SECOND CAUSE OF ACTION**

#### 16 **Wrongful Discharge in Violation of Public Policy**

#### 17 **(Common Law)**

18 4.1 Plaintiff re-alleges each and every allegation as set forth above.

19 4.2 Washington State has a clear common law public policy of encouraging local gov-  
20 ernment employees to disclose improper governmental actions of local government offi-  
21 cials and employees.

22 4.3 Plaintiff disclosed the improper governmental actions of a local government em-  
23 ployee in January 2017 when he reported Deputy Hershaw's sexual misconduct to Detec-  
24 tive Rainer.

25 4.4 Discouraging the reporting of a deputy sheriff's sexual misconduct would jeopard-  
26 ize the policy articulated in Paragraph 4.2 *supra* by preventing the full disclosure of im-  
27 proper governmental actions of local government officials and employees.

28 4.5 Deputy Hershaw asked Assistant Commander Everly and Officer Dollard to single  
29 out Plaintiff for harsh treatment at the CJTC BLEA in Spokane as a direct result of — and  
30 in fact as revenge for — Plaintiff's report of Deputy Hershaw's misconduct. Plaintiff was  
31 targeted for hazing and disproportionate discipline by staff and instructors at the CJTC

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1 Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as  
2 a direct result of Deputy Hershaw's malicious request.

3 4.6 Detective Rainer also asked staff and instructors at the CJTC BLEA in Spokane to  
4 single out Plaintiff for harsh treatment as a direct result of — and in fact as revenge for —  
5 Plaintiff's report of Deputy Hershaw's misconduct. Plaintiff was targeted for hazing and  
6 disproportionate discipline by staff and instructors at the CJTC Academy, including but not  
7 limited to Assistant Commander Everly and Officer Dollard, as a direct result of Detective  
8 Rainer's malicious request.

9 4.7 The targeted hazing and disproportionate discipline endured by Plaintiff ultimately  
10 led to an unsubstantiated determination by Assistant Commander Everly that Plaintiff had  
11 been untruthful during the internal investigation into Plaintiff's alleged misapplication of the  
12 CJTC BLEA's purported overnight guest policy. This unsubstantiated determination re-  
13 sulted in Plaintiff's wrongful dismissal from the CJTC BLEA in Spokane and, a few weeks  
14 later, his wrongful termination by Mayor Koontz.

15 4.8 The targeted hazing and disproportionate discipline endured by Plaintiff at the  
16 CJTC BLEA in Spokane, and his wrongful dismissal therefrom, violated the public policy  
17 articulated in Paragraph 4.2 *supra*.

18 4.9 The wrongful termination of Plaintiff from the Republic PD violated the public policy  
19 articulated in Paragraph 4.2 *supra*.

20 4.10 Assistant Commander Everly gave no other justification for Plaintiff's dismissal  
21 from the CJTC BLEA. His unsubstantiated determination of untruthfulness was the sole  
22 reason cited for Plaintiff's dismissal.

23 4.11 Mayor Koontz gave no other justification for Plaintiff's termination from the Repub-  
24 lic PD. Plaintiff's failure to complete officer training at the CJTC BLEA, which resulted  
25 from Assistant Commander Everly's unsubstantiated determination of untruthfulness, was  
26 the sole reason cited for Plaintiff's termination.

27 4.12 As a direct and proximate result of this wrongful termination, Plaintiff suffered dam-  
28 ages in an amount to be proven at the time of trial.

## 29 **V. THIRD CAUSE OF ACTION**

### 30 **Violation of the Washington Law Against Discrimination**

#### 31 **(Whistleblowing)**

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1 5.1 Plaintiff re-alleges each and every allegation as set forth above.

2 5.2 The Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, prohib-  
3 its a government agency or government manager or supervisor from retaliating against a  
4 whistleblower, as defined in Chapter 42.40 RCW.

5 5.3 RCW 42.40.020(10)(a) defines “whistleblower” as “[a]n employee who in good faith  
6 reports alleged improper governmental action to the auditor or other public official, as de-  
7 fined in subsection (7) of this section.”

8 5.4 RCW 42.40.020(7) defines “public official” to include “the director, or equivalent  
9 thereof in the agency where the employee works” and “individuals designated to receive  
10 whistleblower reports by the head of each agency.”

11 5.5 Plaintiff engaged in protected whistleblowing activity in January 2017 when he re-  
12 ported Deputy Hershaw’s sexual misconduct to Detective Rainer. He met the definition of  
13 whistleblower under RCW 42.40.020(10)(a) and 42.40.020(7) because he in good faith  
14 reported alleged improper governmental action to Detective Rainer, Deputy Hershaw’s  
15 superior and the proper person to receive whistleblower reports.

16 5.6 Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz and  
17 other staff and instructors at the CJTC BLEA retaliated against Plaintiff for whistleblowing  
18 against Deputy Hershaw by singling him out for harsh treatment and disproportionate dis-  
19 cipline at the CJTC Academy. They did so at the request of Deputy Hershaw and Detec-  
20 tive Rainer, both of whom wanted revenge against Plaintiff for reporting Deputy Hershaw’s  
21 sexual misconduct.

22 5.7 Commander Bowen and Assistant Commander Everly retaliated against Plaintiff  
23 for whistleblowing against Deputy Hershaw by dismissing Plaintiff from the CJTC BLEA  
24 on the basis of an unsubstantiated determination that he was untruthful during the internal  
25 investigation of his understanding of the CJTC BLEA overnight guest policy. The investi-  
26 gation and unsupported determination of untruthfulness were the direct result of Deputy  
27 Hershaw’s and Detective Rainer’s requests that Plaintiff be singled out for harsh treatment  
28 as payback for his whistleblowing activity.

29 5.8 Mayor Koontz retaliated against Plaintiff for whistleblowing against Deputy Her-  
30 shaw by terminating Plaintiff from the Republic PD on the basis of his failure to complete  
31 officer training at the CJTC BLEA in Spokane. Plaintiff failed to complete officer training

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1 at the CJTC Academy solely because of the retaliation described in Paragraphs 5.6 and  
2 5.7 herein.

3 5.9 Sheriff Maycumber retaliated against Plaintiff for whistleblowing against Deputy  
4 Hershaw by contacting Mr. Casebeer, speaking negatively about Plaintiff's integrity and  
5 character, warning Mr. Casebeer not to hire Plaintiff and threatening to limit Plaintiff's abil-  
6 ity to perform crisis counseling at the Ferry County Sheriff's Office.

7 5.10 Deputy Rooker and Sheriff Maycumber retaliated against Plaintiff for whistleblow-  
8 ing against Deputy Hershaw by telling local school districts and parents that Plaintiff was  
9 not allowed to be around children.

10 5.11 An unknown Ferry County official retaliated against Plaintiff for whistleblowing  
11 against Deputy Hershaw by spreading rumors about Plaintiff to Ms. Gulky.

12 5.12 Another Ferry County official retaliated against Plaintiff for whistleblowing against  
13 Deputy Hershaw by contacting Chief Kershane, criticizing Plaintiff's integrity and job per-  
14 formance as a police officer and warning Chief Kershane not to hire Plaintiff.

15 5.13 As a direct and proximate result of these numerous instances of retaliation, Plaintiff  
16 suffered damages in an amount to be proven at trial.

## 17 **VI. FOURTH CAUSE OF ACTION**

### 18 **Violation of Substantive Due Process, 42 U.S.C. § 1983**

19 6.1 Plaintiff re-alleges each and every allegation as set forth above.

20 6.2 Plaintiff had a property interest in continued enrollment as a recruit at the CJTC  
21 BLEA in Spokane. He was not on probation and he had performed all requirements from  
22 the date of his enrollment until his wrongful dismissal from the CJTC Academy on May 30,  
23 2017. He was just a few weeks away from graduating.

24 6.3 Commander Bowen and Assistant Commander Everly abridged Plaintiff's property  
25 interest described in Paragraph 6.2 by dismissing Plaintiff because of an unsubstantiated  
26 finding that he had been untruthful during an internal investigation. The investigation and  
27 unsubstantiated finding were, in turn, motivated by Deputy Hershaw's and Detective  
28 Rainer's requests that Assistant Commander Everly, Officer Dollard and other staff and  
29 instructors at the CJTC Academy in Spokane single out Plaintiff for harsh treatment and  
30 disproportionate discipline.

31 6.4 Commander Bowen and Assistant Commander Everly's dismissal of Plaintiff was

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1 arbitrary and unreasonable. Assistant Commander Everly determined that Plaintiff had  
2 been untruthful based on Plaintiff's recall of a conversation about the CJTC Academy's  
3 overnight guest policy that took place four (4) months prior to the date on which Assistant  
4 Commander Everly questioned Plaintiff about it. Officer Daddatto, the other party to the  
5 conversation, could not recall the conversation at all by that time. It was not reasonable  
6 for Assistant Commander Everly and Commander Bowen to conclude that Plaintiff had  
7 been untruthful and deserved to be dismissed.

8 6.5 Executive Director Rahr abridged the property interest described Paragraph 67.2  
9 by upholding Plaintiff's unjustified dismissal. Her decision to support his dismissal was  
10 arbitrary and unreasonable in light of the lack of substantial evidence that Plaintiff had  
11 been untruthful, as described above.

12 6.6 Plaintiff had a property interest in continued employment as a police officer with  
13 the Republic PD. He was not on probation and served in good standing from September  
14 1, 2016 until his wrongful dismissal from the CJTC BLEA in Spokane on May 30, 2017.

15 6.7 Mayor Koontz abridged Plaintiff's property interest described in Paragraph 6.6 by  
16 terminating Plaintiff as the result of his unjustified dismissal from the CJTC BLEA in Spo-  
17 kane.

18 6.8 Mayor Koontz's termination of Plaintiff on these unsupported grounds was arbitrary  
19 and unreasonable. Mayor Koontz did not examine the merits of Plaintiff's dismissal from  
20 the CJTC BLEA, nor did he make an independent determination of whether Plaintiff had  
21 been dismissed for reasons that would merit termination from the Republic PD. Mayor  
22 Koontz simply took the CJTC BLEA staff at its word and rubber-stamped Plaintiff's termi-  
23 nation.

24 6.9 Plaintiff had a liberty interest in the preservation of his good name and reputation.

25 6.10 Deputy Hershaw and Detective Rainer abridged the Plaintiff's liberty interest de-  
26 scribed in Paragraph 6.9 by telling staff and instructors at the CJTC BLEA in Spokane,  
27 including but not limited to Assistant Commander Everly and Officer Dollard, that Plaintiff  
28 was a liar because Plaintiff reported Deputy Hershaw's sexual misconduct to Detective  
29 Rainer.

30 6.11 As a result of Deputy Hershaw's and Detective Rainer's communications, Plaintiff  
31 was wrongfully dismissed from the CJTC BLEA in Spokane and wrongfully terminated

1 from his job at the Republic PD.

2 6.12 Deputy Hershaw's and Detective Rainer's communications are imputed to their  
3 employer, Ferry County, because they made them while acting in the course of their em-  
4 ployment.

5 6.13 Deputy Rooker and Sheriff Maycumber abridged the liberty interest described in  
6 Paragraph 6.9 by telling local school districts and parents that Plaintiff was not allowed to  
7 be around children.

8 6.14 As a result of Deputy Rooker and Sheriff Maycumber's communications, Plaintiff  
9 suffered reputational harm in the community.

10 6.15 Unknown Ferry County officials abridged Plaintiff's liberty interest described in Par-  
11 agraph 6.9 by spreading rumors about Plaintiff to Ms. Gulkey.

12 6.16 As a result of these unknown Ferry County officials' communications, Plaintiff was  
13 terminated from his employment at New Alliance by Ms. Gulkey.

14 6.17 As a direct and proximate result of all of the above-described violations of Plaintiff's  
15 substantive due process rights, Plaintiff suffered damages in an amount to be proven at  
16 trial.

## 17 **VII. FIFTH CAUSE OF ACTION**

### 18 **Violation of Procedural Due Process, 42 U.S.C. § 1983**

19 7.1 Plaintiff re-alleges each and every allegation as set forth above.

20 7.2 Plaintiff had a property interest in continued enrollment as a recruit at the CJTC  
21 BLEA in Spokane. He was not on probation and he had performed all requirements from  
22 the date of his enrollment until his wrongful dismissal from the CJTC Academy on May 30,  
23 2017.

24 7.3 Plaintiff has a liberty interest in the preservation of his good name and reputation.

25 7.4 Commander Bowen and Assistant Commander Everly abridged Plaintiff's property  
26 and liberty interests described Paragraphs 7.2 and 7.3 by dismissing Plaintiff without ad-  
27 equate process. Commander Bowen and Assistant Commander Everly made their deci-  
28 sion to dismiss Plaintiff based solely on Assistant Commander Everly's determination that  
29 Plaintiff had been untruthful during an internal investigation into misconduct. This deter-  
30 mination was based on Plaintiff's recollection of a conversation with Officer Daddatto  
31 about the CJTC Academy's overnight guest policy. Officer Daddatto could not recall the

1 conversation at all. The investigation took less than one (1) week. Plaintiff was not af-  
2 fforded the opportunity to question the witnesses interviewed by Assistant Commander  
3 Everly or to offer any other witness testimony besides his own to support his truthfulness.

4 7.5 The process that resulted in Plaintiff's dismissal from the CJTC BLEA was consti-  
5 tutionally inadequate and fundamentally unfair. Plaintiff was not afforded the opportunity  
6 to give a full defense of his integrity; instead, he was abruptly and unfairly dismissed.

7 7.6 Executive Director Rahr abridged Plaintiff's property and liberty interests described  
8 in Paragraphs 7.2 and 7.3, *supra*, by upholding Plaintiff's wrongful dismissal from the  
9 CJTC BLEA without adequate process. She did not give Plaintiff the opportunity to speak  
10 in his defense or offer witnesses or evidence to rebut Assistant Commander Everly's un-  
11 substantiated finding of untruthfulness. She did not give Plaintiff the opportunity to present  
12 evidence that Deputy Hershaw and/or Detective Rainer had contacted Assistant Com-  
13 mander Everly and asked him to single Plaintiff out for harsh treatment and disproportion-  
14 ate discipline, or that Assistant Commander Everly was biased against Plaintiff as a result  
15 of his prior relationship with Deputy Hershaw.

16 7.7 The process that resulted in Executive Director Rahr's upholding of Plaintiff's un-  
17 justified dismissal from the CJTC BLEA in Spokane was constitutionally inadequate and  
18 fundamentally unfair. Plaintiff was not afforded the opportunity to give a full defense of his  
19 integrity; instead, his unjustified dismissal was summarily upheld.

20 7.8 Plaintiff had a property interest in continued employment as a police officer with  
21 the Republic PD. He was not on probation and served in good standing from September  
22 1, 2016 until his wrongful dismissal from the CJTC BLEA in Spokane on May 30, 2017.

23 7.9 Mayor Koontz abridged the property and liberty interests described Paragraphs  
24 7.8 and 7.3 by terminating Plaintiff without adequate process. Mayor Koontz did not give  
25 Plaintiff the opportunity to speak in his defense or offer witnesses or evidence to rebut the  
26 unsubstantiated finding of untruthfulness that caused his dismissal from the CJTC Acad-  
27 emy and resulted in his termination. Nor did he afford Plaintiff the opportunity to present  
28 evidence that Deputy Hershaw and Detective Rainer had contacted staff and instructors  
29 at the CJTC BLEA in Spokane and asked them to single him out for harsh treatment and  
30 disproportionate discipline. Mayor Koontz did not examine the merits of Plaintiff's dismis-  
31 sal from the CJTC BLEA or the potential bias against Plaintiff stemming from Deputy

1 Hershaw's and Detective Rainer's communications with staff and instructors, nor did he  
 2 make an independent determination of whether Plaintiff had been dismissed for reasons  
 3 that would merit termination from the Republic PD. Mayor Koontz simply took the CJTC  
 4 BLEA staff at its word and rubber-stamped Plaintiff's termination

5 7.10 The process that resulted in Plaintiff's termination was constitutionally inadequate  
 6 and unfair. Plaintiff was not afforded the opportunity to give a full defense of his conduct  
 7 at the CJTC Academy and instead was summarily fired.

8 7.11 As a direct and proximate result of these violations of Plaintiff's procedural due  
 9 process rights, Plaintiff suffered damages in an amount to be proven at trial, including but  
 10 not limited to the loss of his good name and reputation.

# **VIII. SIXTH CAUSE OF ACTION**

## **Infliction of Emotional Distress**

11  
 12  
 13 8.1 Plaintiff re-alleges each and every allegation as set forth above.

14 8.2 The targeted hazing and disproportionate discipline suffered by Plaintiff at the  
 15 CJTC BLEA in Spokane inflicted significant emotional distress on Plaintiff. The systematic  
 16 mistreatment caused him to suffer severe humiliation, stress and anxiety. The actions of  
 17 the staff and instructors at the CJTC Academy were extreme—no decent law enforcement  
 18 officers would subject a recruit to this type of abuse, and indeed no other recruits at the  
 19 CJTC Academy were singled out for such ill-treatment.

20 8.3 Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz and  
 21 other staff and instructors at the CJTC BLEA intended their actions to cause Plaintiff emo-  
 22 tional distress, their goal being to make Plaintiff's experience at the CJTC BLEA a living  
 23 hell as payback for his protected whistleblowing activity against Deputy Hershaw.

24 8.4 The unsupported determination of untruthfulness made by Assistant Commander  
 25 Everly, Plaintiff's dismissal from the CJTC BLEA in Spokane and Plaintiff's ensuing termi-  
 26 nation by Mayor Koontz exacerbated the emotional distress caused by the targeted hazing  
 27 and disproportionate discipline that Plaintiff endured during the CJTC Academy. So too  
 28 did the actions taken by Sheriff Maycumber and other unknown Ferry County officials to  
 29 undermine his employment prospects and reputation in the community. The cumulative  
 30 stress and anxiety resulting from this series of events caused Plaintiff to suffer an anxiety  
 31 attack, for which he sought and received medical treatment.

8.5 In the alternative, the aforesaid Defendants engaged in the conduct described in Paragraphs 8.2, 8.3 and 8.4 with reckless or negligent disregard to the emotional distress it would cause Plaintiff. It was foreseeable that the systematic hazing and disproportionate discipline of Plaintiff at the CJTC BLEA, the unsubstantiated determination that he had been untruthful, his dismissal from the CJTC Academy, his termination from the Republic PD, and Sheriff Maycumber's and other unknown Ferry County officials' interference with his future employment and community reputation would cause Plaintiff severe emotional distress. Defendants deliberately disregarded this probability when they acted.

8.6 Plaintiff's reaction to Defendants' actions was reasonable given the circumstances. The ruination of Plaintiff's law enforcement career and his future prospects both in Ferry County and further afield as a result of Defendants' actions against him was understandably extremely distressing.

8.7 As a direct and proximate result of the emotional distress described herein, Plaintiff suffered damages in an amount to be proven at trial.

## **IX. SEVENTH CAUSE OF ACTION**

### **Intentional Interference with Business Relationship**

9.1 Plaintiff re-alleges each and every allegation as set forth above.

9.2 Plaintiff had a valid contractual relationship with the CJTC BLEA and a valid business expectancy in his graduation from the CJTC Academy upon completion of the required coursework.

9.3 Deputy Hershaw and Detective Rainer knew that Plaintiff was properly enrolled in the CJTC BLEA and knew that, like all recruits, Plaintiff had a valid business expectancy in graduation upon completion of the required coursework.

9.4 Deputy Hershaw and Detective Rainer intentionally interfered with Plaintiff's enrollment in the CJTC Academy by requesting that CJTC BLEA staff and instructors, including Assistant Commander Everly and Officer Dollard, target Plaintiff for hazing, harsh treatment and disproportionate discipline, with the intent of making Plaintiff's experience at the CJTC Academy a living hell and causing him to drop out or suffer dismissal prior to his graduation.

9.5 Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz and other staff and instructors at the CJTC BLEA in Spokane did target him



1 for hazing, harsh treatment and disproportionate discipline, with the intent of making Plain-  
2 tiff's experience at the CJTC Academy a living hell and causing him to drop out or suffer  
3 dismissal prior to his graduation.

4 9.6 The actions described in Paragraphs 9.4 and 9.5 resulted in Plaintiff's dismissal  
5 from the CJTC BLEA prior to graduation; Plaintiff did not graduate.

6 9.7 The actions described in Paragraph 9.4 are imputed to Deputy Hershaw's em-  
7 ployer, Ferry County, because he made the request while acting in the course of his em-  
8 ployment, namely, while picking up targets from the CJTC BLEA following firearms train-  
9 ing.

10 9.8 The actions described in Paragraph 9.4 are imputed to Detective Rainer's em-  
11 ployer, Ferry County, because he made the request while acting in the course of his em-  
12 ployment.

13 9.9 imputedAs a direct and proximate result of this intentional interference with Plain-  
14 tiff's enrollment in the CJTC BLEA in Spokane, Plaintiff suffered damages in an amount  
15 to be proven at trial.

16 9.10 Plaintiff had a valid contractual relationship with the Republic PD and a valid busi-  
17 ness expectancy in his continued employment.

18 9.11 Deputy Hershaw and Detective Rainer knew that Plaintiff had a valid contractual  
19 relationship with the Republic PD and a valid business expectancy in his continued em-  
20 ployment. Republic is a very small town. The Republic PD and the Ferry County Sheriff's  
21 Office work in close proximity to each other and employees are familiar with the terms and  
22 conditions of employment of officers, deputies and staff working for both agencies.

23 9.12 Deputy Hershaw and Detective Rainer intentionally interfered with Plaintiff's con-  
24 tractual relationship with and continued employment by the Republic PD by contacting  
25 staff and instructors at the CJTC BLEA, including Assistant Commander Everly and Officer  
26 Dollard, and asking them to target Plaintiff for harsh treatment and disproportionate disci-  
27 pline at the CJTC Academy. Deputy Hershaw and Detective Rainer made this request in  
28 order to disrupt Plaintiff's experience at the CJTC Academy and thwart his graduation,  
29 which Deputy Hershaw and Detective Rainer knew would result in the termination of Plain-  
30 tiff's employment.

31 9.13 This interference was for an improper purpose and/or by improper means.

VERIFIED COMPLAINT FOR DAMAGES - 24

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1 9.14 Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Jensen,  
 2 Officer Belitz, other staff and instructors at the CJTC BLEA in Spokane knew that Plaintiff  
 3 had a valid contractual relationship with the Republic PD and a valid business expectancy  
 4 in his continued employment, and knew that graduation from the CJTC BLEA was a con-  
 5 dition of his continued employment.

6 9.15 Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Jensen,  
 7 Officer Belitz and other staff and instructors at the CJTC BLEA in Spokane interfered with  
 8 Plaintiff's contractual relationship with the Republic PD and his valid business expectancy  
 9 in continued employment by targeting him for hazing, harsh treatment and disproportion-  
 10 ate discipline, with the intent of making Plaintiff's experience at the CJTC Academy a living  
 11 hell and causing him to drop out or suffer dismissal prior to his graduation.

12 9.16 This interference was for an improper purpose and/or by improper means.

13 9.17 The actions described in Paragraph 9.5 are imputed to the CJTC and Spokane  
 14 because Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Belitz,  
 15 Officer Jensen and the other staff and instructors at the CJTC BLEA in Spokane were  
 16 acting in the course of their employment with these entities by conducting the CJTC BLEA  
 17 in Spokane at the time the actions took place.

18 9.18 The actions described in Paragraph 9.12 and 9.15 resulted in the termination of  
 19 Plaintiff's employment with the Republic PD by Mayor Koontz.

20 9.19 Deputy Hershaw's misconduct is imputed to his employer, Ferry County, because  
 21 he made the communication while acting in the course of his employment, namely, while  
 22 picking up targets from the CJTC BLEA following firearms training.

23 9.20 Detective Rainer's misconduct is imputed to his employer, Ferry County, because  
 24 he made the communication while acting in the course of his employment.

25 9.21 As a direct and proximate result of this intentional interference with Plaintiff's em-  
 26 ployment at the Republic PD, Plaintiff was terminated and suffered damages in an amount  
 27 to be proven at trial.

28 9.22 Plaintiff had a valid contractual relationship with New Alliance and a valid business  
 29 expectancy in his continued employment following the expiration of his six-month proba-  
 30 tionary period.

31 9.23 Sheriff Maycumber, Deputy Rooker, Ms. Burke and other unknown Ferry County



officials knew that Plaintiff had a valid contractual relationship with New Alliance and a valid business expectancy in his continued employment following the expiration of his six-month probationary period.

9.24 Sheriff Maycumber intentionally interfered with Plaintiff's contractual relationship with New Alliance and with Plaintiff's business expectancy in his continued employment by contacting Mr. Casebeer, criticizing Plaintiff's integrity and character and telling Mr. Casebeer not to hire Plaintiff, that it would be a mistake to hire Plaintiff and that if Plaintiff was hired, he would not be allowed to do crisis services at the Ferry County Sheriff's Office.

9.25 This interference was for an improper purpose and/or by improper means.

9.26 Sheriff Maycumber and Deputy Rooker intentionally interfered with Plaintiff's contractual relationship with New Alliance and with Plaintiff's business expectancy in his continued employment by telling local school districts and parents that Plaintiff was not allowed to be around children.

9.27 This interference was for an improper purpose and/or by improper means.

9.28 Other unknown Ferry County Officials intentionally interfered with Plaintiff's contractual relationship with New Alliance and with Plaintiff's business expectancy in his continued employment by spreading rumors about Plaintiff to Ms. Gulkey.

9.29 This interference was for an improper purpose and/or by improper means.

9.30 The actions described in Paragraphs 9.24, 9.26, 9.26 and 9.28 resulted in the termination of Plaintiff's employment at New Alliance by Ms. Gulkey after the expiration of Plaintiff's six-month probationary period.

9.31 As a direct and proximate result of this intentional interference with Plaintiff's employment at New Alliance, Plaintiff suffered damages in an amount to be proven at trial.

## **X. EIGHTH CAUSE OF ACTION**

### **Defamation**

10.1 Plaintiff re-alleges each and every allegation as set forth above.

10.2 Plaintiff is not a public figure.

10.3 Deputy Hershaw and Detective Rainer told staff and instructors at the CJTC BLEA in Spokane, including but not limited to Assistant Commander Everly and Officer Dollard, damaging and untrue facts about Plaintiff including but not limited to that Plaintiff was a

1 liar because Plaintiff reported Deputy Hershaw's sexual misconduct to Detective Rainer.

2 10.4 The communications described in Paragraph 10.3 were not privileged.

3 10.5 The communications described in Paragraph 10.3 were false. Plaintiff truthfully  
4 reported what he knew about Deputy Hershaw's sexual misconduct.

5 10.6 Deputy Hershaw knew that Plaintiff was not a liar because Deputy Hershaw did  
6 engage in the sexual misconduct reported to Detective Rainer. He acted with actual mal-  
7 ice toward Plaintiff, intending to get revenge for Plaintiff's report.

8 10.7 Detective Rainer knew that Plaintiff was not a liar, or at least Detective Rainer  
9 acted with reckless indifference to the truth, because, on information and belief, Deputy  
10 Hershaw privately told him that he did engage in the sexual misconduct reported by Plain-  
11 tiff. Detective Rainer acted with actual malice toward Plaintiff, intending to get revenge for  
12 Plaintiff's report about his friend.

13 10.8 As a result of the communications described in Paragraph 10.3, Plaintiff was tar-  
14 geted for hazing and disproportionate discipline at the CJTC BLEA, dismissed because of  
15 an unsubstantiated determination by Assistant Commander Everly that Plaintiff had been  
16 untruthful during an internal investigation and, as a result of said dismissal, terminated  
17 from his position at the Republic PD.

18 10.9 Deputy Hershaw's and Detective Rainer's defamatory communications are im-  
19 puted to their employer, Ferry County, because they made them while acting in the course  
20 of their employment. Specifically, Deputy Hershaw communicated with Assistant Com-  
21 mander Everly and Officer Dollard while picking up targets from the CJTC BLEA following  
22 firearms training.

23 10.10 As a direct and proximate result of Deputy Hershaw's and Detective Rainer's def-  
24 amation, Plaintiff suffered damages in an amount to be proven at trial.

25 10.11 Sheriff Maycumber and Deputy Rooker told local school districts and parents that  
26 Plaintiff was not allowed to be around children.

27 10.12 The communications described in Paragraph 10.11 were not privileged; they were  
28 made to members of the public.

29 10.13 The communications described in Paragraph 10.11 were false. Plaintiff has never  
30 been barred from being around children.

31 10.14 Sheriff Maycumber and Deputy Rooker knew that the communications described

1 in Paragraph 10.11 were false. They made the communications with actual malice, in-  
 2 tending to damage Plaintiff's reputation in the community.

3 10.15 As a direct and proximate result of Sheriff Maycumber and Deputy Rooker's defa-  
 4 mation, Plaintiff suffered damages in an amount to be proven at trial.

5 10.16 Unknown Ferry County officials spread rumors about Plaintiff to Ms. Gulkey.

6 10.17 On information and belief, the communications described in Paragraph 10.16 were  
 7 not privileged.

8 10.18 On information and belief, the communications described in Paragraph 10.16 were  
 9 false and the unknown Ferry County officials who made them knew of their falsity.

10 10.19 On information and belief, the communications described in Paragraph 10.16 are  
 11 imputed to Ferry County because they were made in the course of the unknown Ferry  
 12 County officials' employment, namely, during the work day while they were acting in their  
 13 capacity as employees and/or elected officials of Ferry County.

14 10.20 As a direct and proximate result of the unknown Ferry County officials' defamation,  
 15 Plaintiff was terminated from his employment at New Alliance by Ms. Gulkey and suffered  
 16 damages in an amount to be proven at trial.

## 17 **XI. NINTH CAUSE OF ACTION**

### 18 **Violation of the Washington Law Against Discrimination**

#### 19 **(Racial Discrimination)**

20 11.1 Plaintiff re-alleges each and every allegation as set forth above.

21 11.2 The WLAD prohibits an employer from discharging or discriminating against a per-  
 22 son in the terms and conditions of employment because of race, and all persons from  
 23 aiding, abetting, encouraging or inciting such practices. These prohibitions are found in  
 24 RCW 49.60.180 and RCW 49.60.220.

25 11.3 Deputy Hershaw and Detective Rainer asked Assistant Commander Everly and  
 26 Officer Dollard, along with other staff and instructors at the CJTC Academy in Spokane,  
 27 to single out Plaintiff for harsh treatment there because of Plaintiff's race. Plaintiff was  
 28 targeted for hazing and disproportionate discipline by staff and instructors at the CJTC  
 29 Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as  
 30 a direct result of Deputy Hershaw's and Detective Rainer's racially-motivated request.

31 11.4 Assistant Commander Everly and Officer Dollard, along with other staff and

1 instructors at the CJTC Academy in Spokane, knowingly or negligently aided and abetted  
2 Deputy Hershaw and Detective Rainer's racially discriminatory motivation.

3 11.5 The targeted hazing and disproportionate discipline endured by Plaintiff culmi-  
4 nated in an unsubstantiated determination by Assistant Commander Everly that Plaintiff  
5 had been untruthful during the internal investigation into Plaintiff's alleged misapplication  
6 of the BLEA's purported overnight guest policy. This unsubstantiated determination re-  
7 sulted in Plaintiff's wrongful dismissal from the CJTC BLEA in Spokane and, a few weeks  
8 later, his wrongful termination by Mayor Koontz.

9 11.6 The actions of Commander Bowen, Assistant Commander Everly, Officer Dollard,  
10 Officer Belitz, Officer Jensen and other staff and instructors at the CJTC BLEA in Spokane  
11 are imputed to their employers, the CJTC and the Spokane PD, because they were un-  
12 dertaken in the course of their employment while conducting the CJTC Academy and be-  
13 cause those employees had authority and responsibility to stop the discriminatory conduct.

14 11.7 Deputy Hershaw's and Detective Rainer's communications with Assistant Com-  
15 mander Everly, Officer Dollard and other staff and instructors at the CJTC Academy in  
16 Spokane violated the prohibition against encouraging or inciting racially discriminatory ac-  
17 tions contained in RCW 49.60.220.

18 11.8 The actions of Deputy Hershaw and Detective Rainer are imputed to their em-  
19 ployer, Ferry County, because they were undertaken in the course of their employment —  
20 with respect to Deputy Hershaw, while he was picking up targets from the CJTC BLEA in  
21 Spokane after firearms training.

22 11.9 The targeted hazing and disproportionate discipline endured by Plaintiff at the  
23 CJTC BLEA in Spokane, and his wrongful dismissal therefrom, violated the prohibition  
24 against racially-motivated discrimination and racially-motivated discharge contained in RCW  
25 49.60.180(2) and RCW 49.60.180(3).

26 11.10 The wrongful termination of Plaintiff from the Republic PD by Mayor Koontz vio-  
27 lated the prohibition against racially-motivated discharge contained in RCW 49.60.180(2).

28 11.11 Mayor Koontz knowingly or negligently aided and abetted the racially discrimina-  
29 tory conduct and intent of Deputy Hershaw and Detective Rainer.

30 11.12 Mayor Koontz's fault is imputed to the City because it was in the course of his  
31 employment and because he had the authority and responsibility to prevent racially

1 discriminatory conduct.

2 11.13 As a direct and proximate result of this race-based discrimination, Plaintiff suffered  
3 damages in an amount to be proven at the time of trial.

## 4 **XII. TENTH CAUSE OF ACTION**

### 5 **Violation of the Washington Law Against Discrimination** 6 **(Racial Discrimination)**

7 12.1 Plaintiff re-alleges each and every allegation as set forth above.

8 12.2 The WLAD prohibits an employer from discriminating against a person in the terms  
9 and conditions of employment because of race. See RCW 49.60.180.

10 12.3 Deputy Hershaw, Deputy Venturo and Detective Rainer made racial jokes and de-  
11 rogatory, racist comments to Plaintiff during his employment, making fun of Plaintiff's race  
12 and non-white skin color. Detective Rainer also engaged in racist conduct directed toward  
13 Plaintiff by making Plaintiff business cards that included a Mexican sombrero emoji and a  
14 large mustache.

15 12.4 This offensive conduct was severe and pervasive. Defendants made racial jokes  
16 and derogatory, racist comments in Plaintiff's hearing on a daily basis at work. A reason-  
17 able person would consider this racist conduct intimidating, hostile and/or abusive.

18 12.5 The actions of Deputy Hershaw, Deputy Venturo and Detective Rainer are imputed  
19 to their employers, Ferry County, because they were undertaken in the course of their  
20 employment.

21 12.6 The actions of Deputy Hershaw, Deputy Venturo and Detective Rainer violated the  
22 prohibition against racially-motivated discrimination contained in RCW 49.60.180(3).

23 12.7 As a direct and proximate result of this race-based discrimination and the hostile  
24 work environment that it created, Plaintiff suffered damages in an amount to be proven at  
25 the time of trial.

## 26 **PRAYER FOR RELIEF**

27 PLAINTIFF requests the following relief:

28 1. A finding that Deputy Hershaw and Detective Rainer violated the prohibi-  
29 tion against retaliation against whistleblowers contained in RCW 42.41.040;

30 2. A finding that Assistant Commander Everly, Officer Dollard, Officer Jensen,  
31 Officer Belitz and other staff and instructors at the CJTC BLEA in Spokane violated the

1 prohibitions against retaliation against and intimidation of whistleblowers contained in  
2 RCW 42.41.040 and RCW 42.41.045, respectively;

3 3. A finding that Commander Bowen, Assistant Commander Everly and Ex-  
4 ecutive Director Rahr wrongfully dismissed Plaintiff from the CJTC BLEA in Spokane in  
5 violation of public policy under state and federal statute and common law;

6 4. A finding that Mayor Koontz wrongfully terminated Plaintiff from the Repub-  
7 lic PD in violation of public policy under state and federal statute and common law;

8 5. A finding that Sheriff Maycumber, Mayor Koontz, Deputy Hershaw, Detec-  
9 tive Rainer, Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz  
10 and other staff and instructors at the CJTC BLEA in Spokane retaliated against Plaintiff  
11 because of his protected whistleblowing activity in violation of the WLAD;

12 6. A finding that Commander Bowen, Assistant Commander Everly, Execu-  
13 tive Director Rahr and Mayor Koontz violated Plaintiff's substantive due process rights;

14 7. A finding that Commander Bowen, Assistant Commander Everly, Execu-  
15 tive Director Rahr and Mayor Koontz violated Plaintiff's procedural due process rights;

16 8. A finding that Sheriff Maycumber, Mayor Koontz, Deputy Rooker, Deputy  
17 Hershaw, Detective Rainer, Assistant Commander Everly, Officer Dollard, Officer Jensen,  
18 Officer Belitz, other staff and instructors at the CJTC BLEA in Spokane and other Ferry  
19 County officials intentionally, recklessly and/or negligently inflicted emotional distress on  
20 Plaintiff;

21 9. A finding that Deputy Hershaw, Detective Rainer, Commander Bowen, As-  
22 sistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz and other staff  
23 and instructors at the CJTC BLEA in Spokane intentionally interfered with Plaintiff's en-  
24 rollment at the CJTC Academy in Spokane and with his valid business expectancy in grad-  
25 uation therefrom;

26 10. A finding that Deputy Hershaw and Detective Rainer intentionally interfered  
27 with Plaintiff's employment relationship with the Republic PD and with his valid business  
28 expectancy in continued employment;

29 11. A finding that Sheriff Maycumber, Deputy Rooker and other Ferry County  
30 officials intentionally interfered with Plaintiff's employment relationship with New Alliance  
31 and with his valid business expectancy in continued employment;

VERIFIED COMPLAINT FOR DAMAGES - 31

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1           12.     A finding that Deputy Hershaw, Detective Rainer, Sheriff Maycumber, Dep-  
2     uty Rooker and other Ferry County officials defamed Plaintiff;

3           13.     A finding that Deputy Hershaw, Detective Rainer, Assistant Commander  
4     Everly, Officer Dollard, Officer Jensen, Officer Belitz, Commander Bowen and Mayor  
5     Koontz discriminated against, dismissed and discharged Plaintiff because of his race in  
6     violation of the WLAD;

7           14.     A finding that the actions of Deputy Hershaw, Detective Rainer, Sheriff  
8     Maycumber, Deputy Rooker and other Ferry County officials are imputed to their em-  
9     ployer, Ferry County.

10          15.     A finding that the actions of Assistant Commander Everly, Officer Dollard,  
11     Officer Jensen, Officer Belitz and other staff and instructors at the CJTC Academy in Spo-  
12     kane who are police officers at the Spokane PD are imputed to their employer, Spokane;

13          16.     A finding that the actions of Commander Bowen and Executive Director  
14     Rahr are imputed to their employer, the CJTC;

15          17.     A finding that the actions of Mayor Koontz are imputed to his employer,  
16     Republic.

17          18.     An award of damages, including, but not limited to, the following:

18               18.1    Past and future wages and benefits of employment, including but  
19               not limited to a reduction of Social Security benefits, the loss of state  
20               law enforcement retirement benefits, lost paid vacation, sick leave,  
21               deferred compensation, holidays and longevity pay;

22               18.2    Loss of career, future advancement, and earning potential;

23               18.3    Tax consequences of an award of past or future wages;

24               18.4    Special and general damages associated with finding comparable  
25               replacement employment;

26               18.5    Special and general damages to mental and physical health;

27               18.6    General damages for embarrassment, humiliation, pain, suffering  
28               and damage to reputation;

29               18.7    All other general and special damages as may be proven;

30               18.8    Attorney's fees and costs of suit, including but not limited to those  
31               available to Plaintiff under RCW 49.48.030, RCW 49.60.030(2) and



42 U.S.C. § 1983.

19. Injunctive relief barring all Defendants from further defaming Plaintiff;

20. An award of such other relief as the Court may believe to be just and equitable under the circumstances.

**DATED** this 10th day of April 2020.

**FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC**

/s/ Allison R. Foreman

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/s/ Nathan J. Arnold

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Attorney for Plaintiff

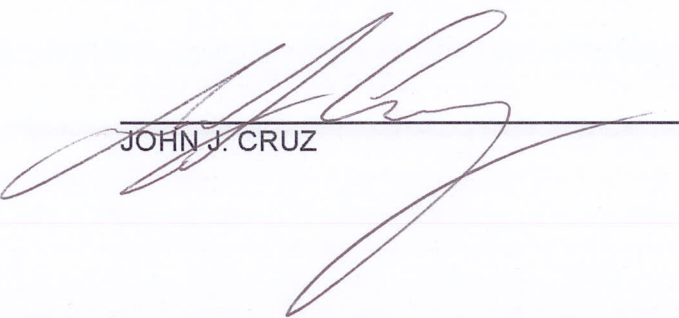
VERIFIED COMPLAINT FOR DAMAGES - 33

**FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC**  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606



VERIFICATION

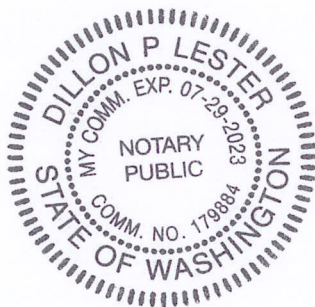
I, John J. Cruz, am the Plaintiff in the above entitled action. I have read the contents of the foregoing Verified Complaint and I believe the same to be true to the best of my knowledge and belief.


  
JOHN J. CRUZ

STATE OF WASHINGTON )  
 ) ss.  
County of Chelan )

I certify that I know or have satisfactory evidence that John J. Cruz is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 10<sup>th</sup> day of April, 2020.



  
(Print Name): Dillon P. Lester  
NOTARY PUBLIC, State of Washington  
My appointment expires: 07/29/2023

VERIFIED COMPLAINT FOR DAMAGES - 34

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6 *Attorneys for Plaintiff*  
 7  
 8  
 9

10 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

11 **JOHN J. CRUZ,**

12 **Plaintiff,**

13 **v.**

14 **FERRY COUNTY; the CITY OF**  
 15 **REPUBLIC, a municipal corporation;**  
 16 **the CITY OF SPOKANE, a municipal**  
 17 **corporation; the WASHINGTON**  
 18 **STATE CRIMINAL JUSTICE**  
 19 **TRAINING COMMISSION, a state**  
**commission; RAY MAYCUMBER,**  
**Ferry County Sheriff; AMY**  
**ROOKER, Ferry County Chief Civil**  
**Deputy; AUSTIN HERSHAW, Police**  
**Officer at the Black Diamond Police**  
**Department; PATRICK RAINER,**

**CASE NO. 2:20-cv-00250-RMP**

**DECLARATION OF EMANUEL**  
**JACOBOWITZ IN SUPPORT OF**  
**PLAINTIFF'S RESPONSE TO**  
**DEFENDANTS' MOTION FOR**  
**PARTIAL SUMMARY**  
**JUDGMENT ON PLAINTIFF'S**  
**STATE LAW CLAIMS**

DECLARATION OF EMANUEL JACOBOWITZ - 1

Detective at the Ferry County Sheriff's )  
 Office; RICK BOWEN, Commander )  
 of the Washington State Criminal )  
 Justice Training Commission Basic )  
 Law Enforcement Academy; JOHN )  
 EVERLY, Police Officer at the )  
 Spokane Police Department and )  
 Assistant Commander of the )  
 Washington State Criminal Justice )  
 Training Commission Basic Law )  
 Enforcement Academy; ART )  
 DOLLARD, Police Officer at the )  
 Spokane Police Department and TAC )  
 Officer at the Washington State )  
 Criminal Justice Training Commission )  
 Basic Law Enforcement Academy; )  
 JAKE JENSEN, Police Officer at the )  
 Spokane Police Department and TAC )  
 Officer at the Washington State )  
 Criminal Justice Training Commission )  
 Basic Law Enforcement Academy; )  
 TODD BELITZ, Police Officer at the )  
 Spokane Police Department and TAC )  
 Officer at the Washington State )  
 Criminal Justice Training Commission )  
 Basic Law Enforcement Academy; and )  
 SUE RAHR, Executive Director of the )  
 Washington State Criminal Justice )  
 Training Commission, )

Defendants. )

1 Emanuel Jacobowitz declares as follows:

2 1. I am an adult citizen of the State of Washington, a member of the Washington  
3 State Bar Association in good standing and admitted to practice before this Court, am  
4 competent to testify and hereby testify of my personal knowledge unless otherwise  
5 indicated. I am counsel of record for the Plaintiff in the above-captioned matter.

6 2. Plaintiff and his legal team have not yet served discovery requests or taken  
7 depositions in this matter.

8 3. We do intend to do so, timely before the discovery cutoff. Among other things,  
9 we intend to inquire, by written discovery and depositions, into the motives of the  
10 moving Defendants for their departures from normal training procedure, their treatment  
11 of similarly situated trainees, the communications between those Defendants and  
12 Defendants Hershaw and Rainer, and the terms of individual Defendants' dual  
13 employment by the Academy and the City of Spokane.

14 I declare under penalty of perjury of the laws of the State of Washington that the  
15 statements contained herein are true and accurate to the best of my knowledge and  
16 belief.

17 Executed this 3d day of August 2021 in Seattle, Washington.

18 /s/ Emanuel Jacobowitz  
19 Emanuel Jacobowitz, WSBA #39991  
Arnold & Jacobowitz PLLC

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Seattle, WA 98121  
Tel: (206) 769-3759  
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Manny@CAJlawyers.com  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2021, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to those registered with CM/ECF, including the following:

Michael E. McFarland, Jr.  
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Jerry Moberg Mary Rathbone  
Email: jmoberg@mrklawgroup.com  
Email: mrathbone@mrklawgroup.com

Carl P. Warring  
Email: CarlW@atg.wa.gov

EXECUTED this 3d day of August 2021 at Seattle, Washington.

/s/Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA No. 39991

1 Emanuel Jacobowitz, WSBA No. 39991  
 2 Nathan J. Arnold, WSBA No. 45356  
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6 *Attorneys for Plaintiff*

Hon. Rosanna M. Peterson

8  
 9 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

10 JOHN J. CRUZ,

11 Plaintiff,

12 v.

13 FERRY COUNTY; the CITY OF  
 14 REPUBLIC, a municipal corporation;  
 the CITY OF SPOKANE, a municipal  
 15 corporation; the WASHINGTON  
 STATE CRIMINAL JUSTICE  
 TRAINING COMMISSION, a state  
 16 commission; RAY MAYCUMBER,  
 Ferry County Sheriff; AMY  
 17 ROOKER, Ferry County Chief Civil  
 Deputy; AUSTIN HERSHAW, Police  
 18 Officer at the Black Diamond Police  
 Department; PATRICK RAINER,  
 19 Detective at the Ferry County Sheriff's  
 Office; RICK BOWEN, Commander

CASE NO. 2:20-cv-00250-RMP

[PROPOSED] ORDER

[PROPOSED] ORDER - 1

1 of the Washington State Criminal )  
 Justice Training Commission Basic )  
 2 Law Enforcement Academy; JOHN )  
 EVERLY, Police Officer at the )  
 3 Spokane Police Department and )  
 Assistant Commander of the )  
 4 Washington State Criminal Justice )  
 Training Commission Basic Law )  
 Enforcement Academy; ART )  
 5 DOLLARD, Police Officer at the )  
 Spokane Police Department and TAC )  
 6 Officer at the Washington State )  
 Criminal Justice Training Commission )  
 7 Basic Law Enforcement Academy; )  
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 10 TODD BELITZ, Police Officer at the )  
 Spokane Police Department and TAC )  
 11 Officer at the Washington State )  
 Criminal Justice Training Commission )  
 12 Basic Law Enforcement Academy; and )  
 SUE RAHR, Executive Director of the )  
 13 Washington State Criminal Justice )  
 Training Commission, )  
 14 )  
 15 Defendants. )



1 THIS MATTER having come before the Court on the motion of Defendants  
2 Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr,  
3 Rick Bowen, John Everly, Art Dollard, Jake Jensen, and Todd Belitz, ECF No. 21, and  
4 the Court having considered:

- 5 1. Defendants' Motion (ECF No. 21);
- 6 2. Defendants Statement of Material Facts (ECF No. 22);
- 7 3. Plaintiff's Brief in Opposition thereto;
- 8 4. The Declaration of John J. Cruz in opposition thereto;
- 9 5. The Declaration of Emanuel Jacobowitz in opposition thereto;
- 10 6. Defendants' Reply;

11 \_\_\_\_\_  
12 \_\_\_\_\_;  
13 and the balance of filings in this matter and being fully advised in the premises.

14 NOW, THEREFORE, IT IS ORDERED, that Defendants' Motion is DENIED.  
15 \_\_\_\_\_  
16 \_\_\_\_\_.

17 DONE IN OPEN COURT this \_\_\_\_ day of \_\_\_\_ 2021.  
18

19 \_\_\_\_\_  
Hon. Rosanna Malouf Peterson

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2701 First Ave., Ste. 200  
Seattle, WA 98121  
113 East Woodin Ave., Ste. 200  
Chelan, WA 98816  
206-799-4221

1 Presented by:

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4 Nathan J. Arnold, WSBA No. 45356

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17 *Attorneys for Plaintiff*

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EXECUTED this 3d day of August 2021 at Seattle, Washington.

/s/Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA No. 39991



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 Office; RICK BOWEN, Commander )  
 2 of the Washington State Criminal )  
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 Basic Law Enforcement Academy; and )  
 14 SUE RAHR, Executive Director of the )  
 Washington State Criminal Justice )  
 15 Training Commission, )  
 )  
 16 Defendants. )

## I. INTRODUCTION

Defendants argue that the Legislature intended to vest in the Commission and its agents a breadth of immunity unprecedented in this country, the right, while on the job, to commit any act for any motive with complete impunity, civil and criminal. On Defendants' theory, these police officers could get away with any wrongdoing up to and including mass murder. Fortunately, Defendants misread the statute, which merely grants them immunity for "official acts performed in the course of their duties" at the state's training Academy. Properly read, this statute does not let the officers avoid liability for acts performed for their own, improper motives, such as retaliating against Plaintiff John Cruz for going against the notorious 'blue wall of silence.' Accordingly, Plaintiff respectfully requests the Court to deny Defendants' motion for partial summary judgment.

## II. STATEMENT OF FACTS

Mr. Cruz does not dispute the facts set forth in the Defendants' Statement of Material Facts, ECF No. 22. Some additional facts are needed for context, however. In 2017, Mr. Cruz, a rookie police officer in the Republic, WA Police Department, attended the Basic Law Enforcement Academy (the "Academy") run by Defendant Washington State Criminal Justice Training Commission (the "Commission"). ECF

1-2 ¶¶ 2.1, 2.20 (“Verified Complaint”) and Declaration of John J. Cruz (“Cruz Dec.”) ¶ 3. A month earlier, Mr. Cruz had run afoul of Defendants Rainer and Hershaw, who were then law enforcement officers for the Ferry County Sheriff’s Department. Verified Complaint ¶¶ 2.3–2.17 and Cruz Dec. ¶ 4. Not only had those officers and others frequently harassed him based on his Hispanic heritage, Verified Complaint ¶¶ 2.2–2.6 and Cruz Dec. ¶ 5, Mr. Cruz had also diligently reported Hershaw for having sex in an official vehicle while on duty, a report which enraged Hershaw. Verified Complaint ¶¶ 2.12–2.17 and Cruz Dec. ¶ 6. When Mr. Cruz attended the Academy starting a month later, Hershaw’s former trainers, Defendants Dollard and Everly, whom Hershaw had just made a special trip to Spokane to speak with, embarked on a campaign of harassment and oppression against Mr. Cruz which culminated in getting him dismissed for supposed dishonesty. Verified Complaint ¶¶ 2.20–2.59 and Cruz Dec. ¶¶ 7, 16 & Exh. A.

Some of the notable incidents in this campaign included:

- Officer Dollard publicly and falsely accused Mr. Cruz of not having submitted a required report and of lying about it, Verified Complaint ¶ 2.21 and Cruz Dec. ¶ 8;
- Officer Dollard publicly berated Mr. Cruz, and only Mr. Cruz, for having his cell phone on during an exercise, like other trainees, Verified Complaint

¶¶ 2.22–2.23 and Cruz Dec. ¶ 9;

- Officer Dollard ordering Mr. Cruz, and only Mr. Cruz, not to sit or lean, while Mr. Cruz was recovering from a leg injury, Verified Complaint ¶¶ 2.24–2.25, 2.31 and Cruz Dec. ¶ 10;
- Officer Dollard assaulted Mr. Cruz with pepper spray under the guise of a training exercise, Verified Complaint ¶¶ 2.29, 2.32 and Cruz Dec. ¶ 11;
- Assistant Commander Everly criticized Mr. Cruz for not wearing a jacket, although no regulation or rule required a jacket, Verified Complaint ¶ 2.39 and Cruz Dec. ¶ 12;
- Assistant Commander Everly singled out Mr. Cruz for nominal violations such as parking in the wrong spot, something he did not sanction other trainees for, Verified Complaint ¶ 2.40 and Cruz Dec. ¶ 13;
- Assistant Commander Everly singled out Mr. Cruz for violating a supposed (and non-existent) policy by having his daughter stay overnight on a weekday; and when Mr. Cruz reported that when he asked for leave to host her, he had been informed only that overnight guests were allowed, without restriction, Assistant Commander Everly declared without evidence that Mr. Cruz was lying and terminated him for dishonesty, Verified Complaint ¶¶ 2.44–2.58 and Cruz Dec. ¶ 14.



1 Plaintiff has not yet deposed any of the Defendants. Declaration of Emanuel  
 2 Jacobowitz, filed herewith. Plaintiff intends to pursue discovery on material facts  
 3 including but not limited to

### 4 **III. ARGUMENT**

5 Defendants argue that the Court should dismiss all state-law claims against the  
 6 Commission and its agents based on RCW 43.101.490:

7 The commission, its boards, and individuals acting on behalf of  
 8 the commission and its boards are immune from suit in any civil  
 9 or criminal action contesting or based upon proceedings or other  
 official acts performed in the course of their duties in the  
 administration and enforcement of this chapter.<sup>1</sup>

10 Defendants argue that the plain language of the statute bars any relief under state law,  
 11 with no further analysis needed. Not so.

12 The language of the statute is indeed broad, and the Washington Court of

13  
 14 <sup>1</sup> Effective July 25, 2021, the statute omits the words “its boards,” and adds a  
 15 second section expressly specifying that immunity extends to actions arising from  
 16 certification or denial of certification of officers. This appears to be a legislative  
 17 endorsement of the intermediate appellate court holding in *Ent v. Washington State*  
 18 *Justice Training Comm’n*, 174 Wash. App. 615, 301 P.3d 468 (2013) that the statute  
 19 covers Academy activity.

1 Appeals did indeed hold that the statute grants immunity for negligent training  
 2 accidents, no matter how grievous. *Ent*, 174 Wash. App. at 619. The *Ent* court did  
 3 not, however, address intentional torts. In particular, it did not address intentional  
 4 torts which were not “official acts performed in the course of their duties.”

5 The statute does not define that term and no court has addressed the question,  
 6 but the Washington Supreme Court has interpreted a similar term, “official duties,” in  
 7 other Washington statutes related to law enforcement, to exclude ‘frolics.’ For one,  
 8 “aggravated” murder includes the murder of a police officer “who was performing his  
 9 or her official duties” at the time. RCW 10.95.020(1). The Washington Supreme  
 10 Court rejected the argument that an officer then carrying out an illegal arrest, outside  
 11 his jurisdiction, was beyond the scope of that statute: “An officer, even if effecting an  
 12 arrest without probable cause, may still be engaged in ‘official duties,’ **provided the**  
 13 **officer is not on a frolic of his or her own....** Cases in which an officer is engaged  
 14 in a crime of violence upon a citizen are distinguishable from situations wherein an  
 15 officer may **inadvertently** infringe upon some constitutional rights of a person.” *State*  
 16 *v. Hoffman*, 116 Wash. 2d 51, 100, 804 P.2d 577, 603 (1991) (emphasis added).  
 17 Similarly, RCW 9A.36.031(1)(g), makes it a crime to assault a police officer who is  
 18 “performing his or her official duties,” was held to include “all aspects of a law  
 19 enforcement officer's **good faith** performance of job-related duties, **excluding**

1 **conduct occurring when the officer is on a frolic of his or her own.”** *State v. Mierz*,  
 2 127 Wash. 2d 460, 478–79, 901 P.2d 286, 295 (1995) (emphasis added) (defendant  
 3 properly charged in absence of evidence of bad faith or frolic).<sup>2</sup>

4 A statute which, like the immunity statute here, involved no danger to the  
 5 officer in question, was interpreted even more narrowly. Under RCW 91.76.020, it is  
 6 a crime to “obstruct[] any law enforcement officer in the discharge of his or her official  
 7 powers or duties.” The Washington Court of Appeals held that an arrest under that  
 8 statute was unlawful, and suppressed the resulting evidence, where the “obstruction”  
 9 consisted of resisting a pat-down during a purely speculative *Terry* stop, because “[a]n  
 10 unlawful detention is by definition not part of lawful police duties.” *State v. Barnes*,  
 11 96 Wash. App. 217, 225, 978 P.2d 1131, 1136 (1999).

12 The similar language in RCW 43.101.390, “official acts performed in the course

---

13  
 14 <sup>2</sup> These cases hearken back to the common-law doctrine that “the master is not liable  
 15 when a servant steps aside from the master's business in order to effect some purpose  
 16 of his or her own; a supervisor’s intentional actions directed toward a subordinate,  
 17 occasioned solely by jealousy, hatred, or other ill feelings, are not, as a matter of law,  
 18 within the scope of employment.” *Mason v. Kenyon Zero Storage*, 71 Wash. App. 5,  
 19 13, 856 P.2d 410, 415 (1993).

1 of their duties” should be interpreted consistently with those other Washington  
2 statutes related to law enforcement officers. Assistant Commander Everly and Officer  
3 Dollard, at least, were not performing official acts in the course of their duties, when  
4 they harassed, assaulted, humiliated, and ginned up a pretext to terminate Mr. Cruz  
5 out of loyalty to ‘the blue,’ racial animus, or hatred for ‘snitches.’ Even in the unlikely  
6 event that the Commission were to admit in its reply brief that it considered retaliation  
7 against whistleblowers to be an act on its behalf and in service of the training and  
8 certification purposes of the Academy, a jury should be entitled to decide whether to  
9 credit such a position.

10 To be clear, the Commission itself remains vicariously liable for its agents’  
11 retaliatory acts, under the reasoning of the United States Supreme Court in *Faragher*  
12 *v. City of Boca Raton*, 524 U.S. 775, 800–802, 118 S. Ct. 2275, 2290, 141 L. Ed. 2d  
13 662 (1998): as a matter of fundamental fairness, even conduct clearly outside the  
14 scope of employment, such as sexual harassment, may give rise to vicarious liability  
15 where the employer enabled the conduct, failed to guard against it, and failed to  
16 correct it when given the opportunity. For the same reason, the City of Spokane,  
17 which was the actual employer of Officer Dollard, Deputy Commander Everly, and  
18 Officer Jensen, remains potentially vicariously liable. Then too, the City of Spokane  
19 was not the Commission or working on behalf of the Commission, so RCW

1 43.101.390 provides no basis at all for dismissing claims against the City of Spokane.

2 Similarly, a jury could reasonably infer that Defendants Jensen and Belitz,  
3 officers who assisted in the harassment campaign, Defendant Bowen, Mr. Everly's  
4 direct supervisor who assisted in the kangaroo-court hearing by which Mr. Cruz was  
5 expelled, and Defendant Rahr, the Executive Director of the Academy who rejected  
6 Mr. Cruz's appeal, were motivated by personal considerations, friendship for Everly  
7 and Dollard, rather than by any intent to serve the Commission's purposes. Therefore,  
8 they should not be dismissed under this statute either.

9 Although the issue raised by this motion appears to be purely legal, a matter of  
10 statutory interpretation, to the extent that the Court deems any material evidence to be  
11 missing, Plaintiff respectfully requests a continuation under Fed. R. Civ. P. 56(d) so  
12 that he may conduct written discovery and depositions regarding, among other things,  
13 the motives of the moving Defendants for their departures from normal training  
14 procedure, their treatment of similarly-situated trainees, the communications between  
15 those Defendants and Defendants Hershaw and Rainer, and the terms of individual  
16 Defendants' dual employment by the Academy and the City of Spokane. Jacobowitz  
17 Dec. ¶ 3. Several months remain until the stipulated discovery deadline, and Plaintiff  
18 should not be considered at fault for not having yet pursued discovery into these  
19 matters; if given the opportunity, he will do so. *Id.*



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EXECUTED this 3d day of August 2021 at Seattle, Washington.

/s/Emanuel Jacobowitz  
Emanuel Jacobowitz, WSBA No. 39991



CARL P. WARRING  
1116 W Riverside, Suite 100  
Spokane, WA 99201  
(509) 456-3123

Honorable Rosanna M. Peterson

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal  
corporation; the CITY OF  
SPOKANE, a municipal  
corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, a state  
commission; RAY MAYCUMBER,  
Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief  
Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at  
the Ferry County Sheriffs Office;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice

NO. 2:20-cv-00250-RMP

DEFENDANTS'  
STATEMENT OF  
MATERIAL FACTS

1 Training Commission Basic Law  
 2 Enforcement Academy; ART  
 3 DOLLARD, Police Officer at the  
 4 Spokane Police Department and  
 5 TAC Officer at the Washington  
 6 State Criminal Justice Training  
 7 Commission Basic Law  
 8 Enforcement Academy; JAKE  
 9 JENSEN, Police Officer at the  
 10 Spokane Police Department and  
 11 TAC Officer at the Washington  
 12 State Criminal Justice Training  
 13 Commission Basic Law  
 14 Enforcement Academy; TODD  
 15 BELITZ, Police Officer at the  
 16 Spokane Police Department and  
 17 TAC Officer at the Washington  
 18 State Criminal Justice Training  
 19 Commission Basic Law  
 20 Enforcement Academy; and SUE  
 21 RAHR, Executive Director of the  
 22 Washington State Criminal Justice  
 Training Commission,

Defendants.

Pursuant to LR 56.1, the Defendants Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, & Todd Belitz submit the following Statement of Material Facts:

1. In February 2017, Plaintiff John Cruz began his training at the Criminal Justice Training Commission's Basic Law Enforcement Academy. ECF No. 2-6 at 31.

2. In May 2017, Cruz was dismissed from the Basic Law Enforcement

1 Academy. ECF No. 2-6 at 36.

2 3. In June 2017, Cruz's dismissal from the Basic Law Enforcement  
3 Academy was appealed. ECF No. 2-6 at 38.

4 4. Also in June 2017, Sue Rahr, Executive Director of the Criminal Justice  
5 Training Commission, upheld Cruz's dismissal from the Basic Law Enforcement  
6 Academy. ECF No. 2-6 at 38.

7 5. In relevant part, the present action names the Washington State  
8 Criminal Justice Training Commission, the City of Spokane, Sue Rahr, Rick  
9 Bowen, John Everly, Art Dollard, Jake Jensen and Todd Belitz as defendants.  
10 ECF No. 2-6 at 29-30.

11 6. Plaintiff has pleaded eight state law claims: (1) Wrongful Termination  
12 in Violation of Public Policy (Whistleblowing); (2) Wrongful Discharge in  
13 Violation of Public Policy (Common Law); (3) Violation of the Washington Law  
14 Against Discrimination (Whistleblowing); (4) Infliction of Emotional Distress;  
15 (5) Intentional Interference with Business Relationship; (6) Defamation; (7)  
16 Violation of the Washington Law Against Discrimination (Racial  
17 Discrimination); and (8) Violation of the Washington Law Against  
18 Discrimination (Racial Discrimination). ECF No. 2-6 at 39-56

19 7. Plaintiff's factual allegations in support of his state law claims against  
20 the Defendants Washington State Criminal Justice Training Commission, the  
21 City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen  
22

1 and Todd Belitz arise from Cruz's participation in and dismissal from the  
2 Criminal Justice Training Commission's Basic Law Enforcement Academy.  
3 ECF no. 2-6 at 30-39.

4 DATED this 13th day of July, 2021.

5  
6 ROBERT W. FERGUSON  
Attorney General

7  
8 s/Carl P. Warring  
CARL P WARRING, WSBA No. 27164  
Assistant Attorney General  
9 Attorney for Defendants Washington State  
10 Criminal Justice Training Commission,  
City of Spokane, Sue Rahr, Rick Bowen,  
11 John Everly, Art Dollard, Jake Jensen, &  
Todd Belitz  
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20  
21  
22

**PROOF OF SERVICE**

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Allison R. Foreman	<a href="mailto:allison@fhbzl.com">allison@fhbzl.com</a>
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Jerry Moberg	<a href="mailto:jmoberg@mrklawgroup.com">jmoberg@mrklawgroup.com</a>
Mary Rathbone	<a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 13th day of July, 2021, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring

CARL P WARRING, WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington State  
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Honorable Rosanna M. Peterson

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

JOHN J. CRUZ,

NO. 2:20-cv-00250-RMP

Plaintiff,

v.

DEFENDANTS' MOTION  
AND MEMORANDUM FOR  
PARTIAL SUMMARY  
JUDGMENT ON  
PLAINTIFF'S STATE LAW  
CLAIMS

9/3/2021  
Without Oral Argument

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal  
corporation; the CITY OF  
SPOKANE, a municipal  
corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, a state  
commission; RAY MAYCUMBER,  
Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief  
Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at  
the Ferry County Sheriffs Office;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; ART  
DOLLARD, Police Officer at the  
Spokane Police Department and

DEFENDANTS' MOTION AND  
MEMORANDUM FOR  
PARTIAL SUMMARY  
JUDGMENT ON PLAINTIFF'S  
STATE LAW CLAIMS **1-ER - 125**

1

ATTORNEY GENERAL OF WASHINGTON  
West 1116 Riverside Avenue  
Spokane, WA 99201-1194  
(509) 456-3123

1 TAC Officer at the Washington  
 2 State Criminal Justice Training  
 Commission Basic Law  
 Enforcement Academy; JAKE  
 3 JENSEN, Police Officer at the  
 Spokane Police Department and  
 4 TAC Officer at the Washington  
 State Criminal Justice Training  
 Commission Basic Law  
 Enforcement Academy; TODD  
 5 BELITZ, Police Officer at the  
 Spokane Police Department and  
 6 TAC Officer at the Washington  
 State Criminal Justice Training  
 Commission Basic Law  
 Enforcement Academy; and SUE  
 7 RAHR, Executive Director of the  
 Washington State Criminal Justice  
 Training Commission,  
 8

9  
 10  
 11 Defendants.

## 12 I. MOTION

13 Pursuant to Fed. R. Civ. P. 56, the Defendants Washington State Criminal  
 14 Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, John  
 15 Everly, Art Dollard, Jake Jensen, & Todd Belitz move the Court for an order  
 16 granting them summary judgment on Plaintiff's state law claims. The motion is  
 17 based on RCW 43.101.390, which grants the Commission and its agents  
 18 immunity from civil actions. Accordingly, this Court should dismiss Cruz's state  
 19 law claims against the moving Defendants.

## 20 II. MEMORANDUM

### 21 A. Facts

22 The following facts, which are taken from Plaintiff John Cruz's verified  
 DEFENDANTS' MOTION AND 2 ATTORNEY GENERAL OF WASHINGTON  
 MEMORANDUM FOR West 1116 Riverside Avenue  
 PARTIAL SUMMARY Spokane, WA 99201-1194  
 JUDGMENT ON PLAINTIFF'S (509) 456-3123  
 STATE LAW CLAIMS 1-ER - 126

1 complaint, are undisputed:

- 2 • Cruz began his training at the Criminal Justice Training Commission's
- 3 Basic Law Enforcement Academy in February 2017, ECF No. 2-6 at 31;
- 4 • Cruz was dismissed from the Basic Law Enforcement Academy in May
- 5 2017, ECF No. 2-6 at 36;
- 6 • Cruz appealed his dismissal from the Basic Law Enforcement Academy in
- 7 June 2017, ECF No. 2-6 at 38;
- 8 • The Executive Director of the Criminal Justice Training Commission
- 9 upheld Cruz's dismissal from the Basic Law Enforcement Academy in
- 10 June 2017, ECF No. 2-6 at 38;
- 11 • In relevant part, Cruz names the Washington State Criminal Justice
- 12 Training Commission, the City of Spokane, Sue Rahr, Rick Bowen, John
- 13 Everly, Art Dollard, Jake Jensen and Todd Belitz as defendants in this
- 14 action, ECF No. 2-6 at 29-30;
- 15 • In relevant part, Cruz's lawsuit alleges 8 different state law claims, ECF
- 16 No. 2-6 at 39-56; and
- 17 • The factual allegations supporting Cruz's state law claims against the
- 18 defendants Washington State Criminal Justice Training Commission, the
- 19 City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake
- 20 Jensen and Todd Belitz arise from Cruz's participation in and dismissal
- 21 from the Basic Law Enforcement Academy, ECF no. 2-6 at 30-39.
- 22



**B. Standard For Granting Summary Judgment**

A party is entitled to summary judgment when the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine material issue of fact and that the moving party is entitled to summary judgment as a matter of law.” Fed. R. Civ. P. 56(c). Said another way, summary judgment is proper “. . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 884 (1990). The moving party has the initial burden of showing which material facts lack a genuine issue; the nonmoving party must then identify specific facts where there exists a genuine issue of material fact. *T.W. Elec. Serv., Inc., v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). A nonmoving party “may not rely on the *mere allegations* in the pleadings in order to preclude summary judgment.” *Id.* (emphasis added). Instead, they “must produce at least some *significant probative evidence* tending to support the complaint.” *Id.* (emphasis added).

**C. Argument**

**1. RCW 43.101.390 Bars Cruz’s State Law Claims Against The Commission And Its Agents**

RCW 43.101.390 makes the Commission and its agents immune from civil

lawsuits based upon state law.<sup>1</sup> In its current form,<sup>2</sup> RCW 43.101.390 provides,

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

RCW 43.101.390. This immunity extends to claims brought against the commission by law enforcement trainees participating in the Basic Law

---

<sup>1</sup> Defendants recognize that statutory immunity afforded by a state statute cannot defeat claims brought under 42 U.S.C. § 1983. *Wallis v. Spencer*, 202 F.3d 1126, 1144 (9th Cir. 2000). Accordingly, RCW 43.101.390 does not operate to bar Cruz's substantive due process or procedural due process claims brought pursuant to 42 U.S.C. § 1983. But, these are the only two claims that can survive the moving Defendants' present motion.

<sup>2</sup> The Legislature amended RCW 43.101.390 in 2021 to read as follows:

(1) The commission and individuals acting on behalf of the commission are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter.

(2) Without limiting the generality of the foregoing, the commission and individuals acting on behalf of the commission are immune from suit in any civil action based on the certification, denial of certification, suspension, or other action regarding decertification of peace officers, reserve officers, or corrections officers.

RCW 43.101.390. The amendment becomes effective July 25, 2021. 2021 Wash. Legis. Serv. Ch. 323 (S.S.B. 5051).

1 Enforcement Academy, as illustrated by *Ent v. Washington State Criminal*  
 2 *Justice Training Comm'n*, 174 Wash. App. 615, 301 P.3d 468 (2013).

3 In *Ent*, the plaintiff was a cadet (trainee) at the Commission's Basic Law  
 4 Enforcement Academy. *Ent*, 174 Wash. App. at 617. The plaintiff in *Ent*, as part  
 5 of the commencement ceremony, was required to attend inspection and  
 6 graduation ceremony. *Id.* After standing motionless in formation for an hour,  
 7 and after two other classmates had fainted, the plaintiff fainted, injuring his head.  
 8 *Id.*

9 The plaintiff sued the Commission for his injuries. *Id.* He alleged that the  
 10 Commission breached its duty of reasonable care given the conditions of the  
 11 graduation ceremony. *Id.* The Commission moved for a judgment on the  
 12 pleadings based upon the immunity provided in RCW 43.101.390. *Id.* at 618.  
 13 After the trial court granted the CR 12(c) motion, the plaintiff appealed. *Id.* On  
 14 appeal, the appellate court found that RCW 43.101.390's immunity applied to  
 15 cadet training and upheld the dismissal of the plaintiff's case. *Id.* at 619.  
 16 Importantly, the appellate court observed:

17 Whether or not we agree with broad immunity for the CJTC as a  
 18 matter of public policy is irrelevant. The State has authority to  
 19 determine whether it will be immune from liability for its acts.  
 Const. art. II, § 26. Therefore, any challenge to the wisdom of such  
 broad immunity is an issue to be taken to the legislature.

20 *Id.* (internal citations omitted).

Here there is no factual dispute that Cruz's state law claims against the Defendants who are bringing this motion arise from Cruz's participation in, and dismissal from, the Commission's Basic Law Enforcement Academy. As a matter of law, RCW 43.101.390 affords each of these Defendants immunity from Cruz's state law claims. Accordingly, Cruz's state law claims against these Defendants must be dismissed with prejudice.

**D. Conclusion**

For the reasons discussed above, the Court should grant the Defendants' motion for summary judgment and dismiss (with prejudice) Cruz's state law claims brought against the moving Defendants.

DATED this 13th day of July, 2021.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring  
CARL P WARRING, WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington State  
Criminal Justice Training Commission,  
City of Spokane, Sue Rahr, Rick Bowen,  
John Everly, Art Dollard, Jake Jensen, &  
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**PROOF OF SERVICE**

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Mary Rathbone	<a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 13th day of July, 2021, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring

CARL P WARRING, WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington State  
Criminal Justice Training Commission,  
City of Spokane, Sue Rahr, Rick Bowen,  
John Everly, Art Dollard, Jake Jensen, &  
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Honorable Rosanna M. Peterson

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal  
corporation; the CITY OF  
SPOKANE, a municipal  
corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, a state  
commission; RAY MAYCUMBER,  
Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief  
Civil Deputy; AUSTIN  
HERSHAW, Police Officer at the  
Black Diamond Police Department;  
PATRICK RAINER, Detective at  
the Ferry County Sheriffs Office;  
RICK BOWEN, Commander of the  
Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy; JOHN  
EVERLY, Police Officer at the  
Spokane Police Department and  
Assistant Commander of the  
Washington State Criminal Justice

NO. 2:20-cv-00250-RMP

ORDER GRANTING  
DEFENDANT'S MOTION  
FOR PATIAL SUMMARY  
JUDGMENT  
**[PROPOSED]**

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT **[PROPOSED]** - ER - 133

1 Training Commission Basic Law  
 2 Enforcement Academy; ART  
 3 DOLLARD, Police Officer at the  
 4 Spokane Police Department and  
 5 TAC Officer at the Washington  
 6 State Criminal Justice Training  
 7 Commission Basic Law  
 8 Enforcement Academy; JAKE  
 9 JENSEN, Police Officer at the  
 10 Spokane Police Department and  
 11 TAC Officer at the Washington  
 12 State Criminal Justice Training  
 13 Commission Basic Law  
 14 Enforcement Academy; TODD  
 15 BELITZ, Police Officer at the  
 16 Spokane Police Department and  
 17 TAC Officer at the Washington  
 18 State Criminal Justice Training  
 19 Commission Basic Law  
 20 Enforcement Academy; and SUE  
 21 RAHR, Executive Director of the  
 22 Washington State Criminal Justice  
 Training Commission,

Defendants.

On September 3, 2021, the Court considered the Defendants Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, & Todd Belitz's motion for partial summary judgment without oral argument. The Court considered the pleadings on file, which specifically included:

- Defendants' Motion and Memorandum Of Authorities For Summary Judgment;
- Defendants' Statement of Material Facts;

- Plaintiff's responsive pleadings, if any; and
- Defendants' reply pleadings, if any.

Based upon the authorities cited, and pleadings on file, the Court finds that no genuine issue of material fact exists and concludes that the Defendants Washington State Criminal Justice Training Commission, City of Spokane, Sue Rahr, Rick Bowen, John Everly, Art Dollard, Jake Jensen, & Todd Belitz are entitled to judgment as a matter of law on the Plaintiff's state law claims. Accordingly, Plaintiff's state law claims against the moving defendants are hereby dismissed with prejudice.

DATED this \_\_\_\_\_ day of September, 2021

Honorable Rosanna M. Peterson

Presented by:

ROBERT W. FERGUSON  
Attorney General

Approved as to form and notice  
of presentation waived:  
FOREMAN HOTCHKISS  
BAUCHER & ZIMMERMAN  
CLOUTIER ARNOLD  
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CARL P WARRING, WSBA No.  
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Assistant Attorney General  
Attorney for Defendants Washington  
State Criminal Justice Training  
Commission, City of Spokane, Sue  
Rahr, Rick Bowen, John Everly, Art  
Dollard, Jake Jensen, & Todd Belitz

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7 WSBA No. 23000  
8 Attorney for Ferry County Defendants

9 MOBERG RATHBONE KEARNS

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---

JERRY MOBERG, WSBA No. 5282  
11 MARY RATHBONE, WSBA #55035  
12 Attorneys for Defendant City of  
13 Republic  
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**PROOF OF SERVICE**

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Mary Rathbone	<a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 13th day of July, 2021, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring

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Assistant Attorney General  
Attorney for Defendants Washington State  
Criminal Justice Training Commission,  
City of Spokane, Sue Rahr, Rick Bowen,  
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The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JOHN J. CRUZ,  
Plaintiff,

v.

FERRY COUNTY; the CITY OF  
REPUBLIC, a municipal corporation; the  
CITY OF SPOKANE, a municipal  
corporation; the WASHINGTON STATE  
CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff;  
AMY ROOKER, Ferry County Chief Civil  
Deputy; AUSTIN HERSHAW, Police  
Officer at the Black Diamond Police  
Department; PATRICK RAINER,  
Detective at the Ferry County Sheriffs  
Office; RICK BOWEN, Commander of the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement  
Academy; JOHN EVERLY, Police Officer  
at the Spokane Police Department and  
Assistant Commander of the Washington  
State Criminal Justice Training  
Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer  
at the Spokane Police Department and TAC  
Officer at the Washington State Criminal  
Justice Training Commission Basic Law  
Enforcement Academy; JAKE JENSEN,  
Police Officer at the Spokane Police  
Department and TAC Officer at the  
Washington State Criminal Justice Training

NO. 2:20-cv-00729-MJP

DEFENDANTS WASHINGTON  
STATE CRIMINAL JUSTICE  
TRAINING COMMISSION, CITY  
OF SPOKANE, RICK BOWEN,  
JOHN EVERLY, ART DOLLARD,  
JAKE JENSEN, TODD BELITZ  
AND SUE RAHR'S ANSWER TO  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND JURY DEMAND

DEFENDANTS' ANSWER TO  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES AND JURY DEMAND  
No. 2:20-cv-00729

1

ATTORNEY GENERAL OF WASHINGTON  
1116 West Riverside Avenue, Suite 100  
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(509) 456-3123

Commission Basic Law Enforcement Academy; TODD BELITZ, Police Officer at the Spokane Police Department and TAC Officer at the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy; and SUE RAHR, Executive Director of the Washington State Criminal Justice Training Commission,

Defendants.

Defendants WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION, CITY OF SPOKANE, RICK BOWEN, JOHN EVERLY, ART DOLLARD, JAKE JENSEN, TODD BELITZ AND SUE RAHR, in answer to Plaintiff's complaint, admit, deny and allege as follows:

# **I. PARTIES, JURISDICTION AND VENUE**

1.1 Admitted.

1.2 Admitted.

1.3 Admitted.

1.4 Admitted.

1.5 Admitted.

1.6 The Defendants are without sufficient information to form a belief as to the truth of the matter asserted and therefore deny the same.

1.7 The Defendants are without sufficient information to form a belief as to the truth of the matter asserted and therefore deny the same.

1.8 The Defendants are without sufficient information to form a belief as to the truth of the matter asserted and therefore deny the same.

1.9 The Defendants are without sufficient information to form a belief as to the truth of the matter asserted and therefore deny the same.

1.10 As to the time periods relevant to this lawsuit, Admitted.

1.11 Admitted in part, denied in part. Defendants admit that Defendant Everly is a police officer employed by the Spokane Police Department. Defendants further admit that at times relevant to this lawsuit, Defendant Everly was the assistant commander of the academy. Any allegation or inference from an allegation not specifically admitted is denied.

1.12 Admitted in part, denied in part. Defendants admit that Defendant Dollard is a police officer employed by the Spokane Police Department and that Defendant Dollard resides in Spokane County. Defendants further admit that at times relevant to this lawsuit, Defendant Dollard was a Defensive Tactics Instructor at CJTC BLEA at Spokane. Any allegation or inference from an allegation not specifically admitted is denied.

1.13 Admitted in part, denied in part. Defendants admit that Defendant Jensen is a police officer employed by the Spokane Police Department and that Defendant Jensen resides in Spokane County. Defendants further admit that at times relevant to this lawsuit, Defendant Jensen was a Defensive Tactics Instructor at CJTC BLEA at Spokane. Any allegation or inference from an allegation not specifically admitted is denied.

1.14 Admitted in part, denied in part. Defendants admit that at times relevant to this lawsuit, Defendant Belitz was a Defensive Tactics Instructor at CJTC BLEA at Spokane and that Defendant Belitz resides in Spokane County. Any allegation or inference from an allegation not specifically admitted is denied.

1.15 Admitted.

1.16 The allegation calls for a conclusion of law and therefore no answer is required. Any allegation or inference from an allegation not specifically admitted is denied.

## II. FACTS SUPPORTING CLAIM

2.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

2.2 Admitted in part, denied in part. Defendants admit Plaintiff was employed by the Republic Police Department. Any allegation or inference from an allegation not specifically admitted is denied.

2.3 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.4 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.5 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.6 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.7 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.8 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.9 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.10 Admitted.

2.11 Admitted.

2.12 Admitted.

2.13 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.14 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.15 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.16 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.17 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.18 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.19 Denied.

2.20 Denied.

2.21 Admitted.

2.22 Denied.

2.23 Denied.

2.24 Admitted in part, denied in part. Defendants admit that during defensive tactics training, Plaintiff's mobile phone went off. Any allegation or inference from an allegation not specifically admitted is denied.

2.25 Admitted in part, denied in part. Defendants admit that other recruits had their mobile phones ring. Any allegation or inference from an allegation not specifically admitted is denied.

2.26 Admitted in part, denied in part. At a point during his attendance of BLEA, Plaintiff was on light duty. Any allegation or inference from an allegation not specifically admitted is denied.

2.27 Denied.

2.28 Admitted in part, denied in part. The Defendants admit that Plaintiff sustained a shoulder injury during a drill and was diagnosed with a right shoulder strain involving AC joint injury and possible rotator cuff tear. Any allegation or inference from an allegation not specifically admitted is denied.

2.29 Admitted in part, denied in part. The Defendants admit that Plaintiff did not go through the oleoresin capicum (pepper spray) certification with the rest of the class. He was certified on a later date. Any allegation or inference from an allegation not specifically admitted is denied.

1 2.30 Denied.

2 2.31 Denied.

3 2.32 Admitted in part, denied in part. The Defendants admit that after being sprayed the  
4 Plaintiff was required to complete an exercise, and sustained a foot injury during that exercise.  
5 Any allegation or inference from an allegation not specifically admitted is denied.

6 2.33 Denied.

7 2.34 Denied.

8 2.35 Denied.

9 2.36 Admitted in part, denied in part. The Defendants admit that the Plaintiff and Recruit Jose  
10 Perez paired for certain exercises initially and also paired with other recruits as the program  
11 progressed. Any allegation or inference from an allegation not specifically admitted is denied.

12 2.37 Admitted in part, denied in part. During interviews, following Plaintiff's dismissal, other  
13 recruits commented on Plaintiff's treatment at BLEA. Any allegation or inference from an  
14 allegation not specifically admitted is denied.

15 2.38 Admitted in part, denied in part. The Defendants admit that Recruit Matthew Ponusky  
16 observed Plaintiff being yelled at in front of the class. Defendants are without sufficient  
17 information to form a belief as to the truth of the remainder of the allegation and therefore deny  
18 the same.

19 2.39 Denied.

20 2.40 Denied.

21 2.41 Denied.

22 2.42 Admitted in part, denied in part. Defendants admit that Everly spoke with Chief Culp and  
23 reported Plaintiff's failure to meet expectations, including violating program rules relating to  
24 parking. Any allegation or inference from an allegation not specifically admitted is denied.

25 2.43 Denied.



1 2.44 Admitted in part, denied in part. Defendants admit that Everly spoke with Chief Culp  
 2 following Plaintiff's pepper spray certification and shared Plaintiff's continuing failure to meet  
 3 expectations. Any allegation or inference from an allegation not specifically admitted is denied.

4 2.45 Admitted in part, denied in part. Defendants admit that the Plaintiff was dismissed from  
 5 the program. Any allegation or inference from an allegation not specifically admitted is denied.

6 2.46 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 7 these allegations and, therefore, deny the same.

8 2.47 Admitted in part, denied in part. Defendants admit that Officer Daddatto does not recall  
 9 any specific conversation with Plaintiff about guests and further denies what Plaintiff attributes to  
 10 the conversation as inconsistent with information Daddatto would have provided had a  
 11 conversation occurred. Any allegation or inference from an allegation not specifically admitted is  
 12 denied.

13 2.48 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 14 these allegations and, therefore, deny the same.

15 2.49 Admitted in part, denied in part. Defendants admit that Plaintiff had overnight guests  
 16 during the week and weekends. Any allegation or inference from an allegation not specifically  
 17 admitted is denied.

18 2.50 Denied.

19 2.51 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 20 these allegations and, therefore, deny the same.

21 2.52 Admitted in part, denied in part. On May 26, 2017, Plaintiff was questioned by Assistant  
 22 Commander Everly about his daughter's overnight stays at the hotel during the CJTC Academy.  
 23 Any allegation or inference from an allegation not specifically admitted is denied.

24 2.53 Denied.

25 2.54 Admitted.

26 2.55 Denied.

1 2.56 Admitted in part, denied in part. Defendants admit that Assistant Commander Everly  
 2 asked Plaintiff about his conversation with Officer Daddatto about overnight guests. Any  
 3 allegation or inference from an allegation not specifically admitted is denied.

4 2.57 Admitted in part, denied in part. Defendants admit that Assistant Commander Everly  
 5 asked Officer Daddatto about his conversation with Plaintiff about overnight guests. Officer  
 6 Daddatto did not recall any conversation and denied he would have said what Plaintiff attributed  
 7 to him. Any allegation or inference from an allegation not specifically admitted is denied.

8 2.58 Defendants admit that Assistant Commander Everly interviewed Recruit Ulrich about  
 9 Plaintiff's conversation with Officer Daddatto about overnight guests. Any allegation or  
 10 inference from an allegation not specifically admitted is denied.

11 2.59 Admitted in part, denied in part. The Defendants admit that Assistant Commander Everly  
 12 concluded that Plaintiff had lied in his account of the conversation with Officer Daddatto. Any  
 13 allegation or inference from an allegation not specifically admitted is denied.

14 2.60 Admitted in part, denied in part. The Defendants admit that on May 30, 2017, just three  
 15 (3) weeks before graduation, Plaintiff was dismissed from the CJTC BLEA in Spokane for a  
 16 violation of the Academy's integrity policy, namely, that Plaintiff was found to be untruthful in  
 17 his account of his conversation with Officer Daddatto. Any allegation or inference from an  
 18 allegation not specifically admitted is denied.

19 2.61 Admitted.

20 2.62 Denied.

21 2.63 Denied.

22 2.64 Denied.

23 2.65 Admitted.

24 2.66 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 25 these allegations and, therefore, deny the same.  
 26

2.67 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.68 Admitted in part, denied in part. The Defendants admit that on May 31, 2017, Chief Culp asked Commander Everly by email whether anyone from Ferry County had contacted Assistant Commander Everly or his staff about Plaintiff. Any allegation or inference from an allegation not specifically admitted is denied.

2.69 Denied.

2.70 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.71 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.72 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.73 Admitted.

2.74 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.75 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.76 Admitted.

2.77 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.78 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

2.79 Defendants lack knowledge or information sufficient to form a belief as to the truth of these allegations and, therefore, deny the same.

1 2.80 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 2 these allegations and, therefore, deny the same.

3 2.81 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 4 these allegations and, therefore, deny the same.

5 2.82 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 6 these allegations and, therefore, deny the same.

7 2.83 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 8 these allegations and, therefore, deny the same.

9 2.84 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 10 these allegations and, therefore, deny the same.

11 2.85 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 12 these allegations and, therefore, deny the same.

13 2.86 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 14 these allegations and, therefore, deny the same.

15 2.87 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 16 these allegations and, therefore, deny the same.

17 2.88 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 18 these allegations and, therefore, deny the same.

19 2.89 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 20 these allegations and, therefore, deny the same.

21 2.90 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 22 these allegations and, therefore, deny the same.

23 2.91 Defendants lack knowledge or information sufficient to form a belief as to the truth of  
 24 these allegations and, therefore, deny the same.

**III. FIRST CAUSE OF ACTION**  
**Wrongful Termination in Violation of Public Policy**

3.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

3.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.8 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.9 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.10 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

3.12 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

**IV. SECOND CAUSE OF ACTION**  
**Wrongful Discharge in Violation of Public Policy (Common Law)**

4.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

4.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.8 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.9 The allegation is directed to a co-defendant and therefore no answer is necessary.

4.10 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

4.12 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

**V. THIRD CAUSE OF ACTION**  
**Violation of the Washington Law Against Discrimination (Whistleblowing)**

5.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

5.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.8 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.9 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.10 The allegation is directed to a co-defendant and therefore no answer is necessary.

5.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.12 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

5.13 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

**VI. FOURTH CAUSE OF ACTION**  
**Violation of Substantive Due Process, 42 U.S.C. § 1983**

6.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

6.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.7 The allegation is directed to a co-defendant and therefore no answer is necessary.

6.8 The allegation is directed to a co-defendant and therefore no answer is necessary.

6.9 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.10 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.12 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.



6.13 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.14 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.15 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.16 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

6.17 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

## VII. FIFTH CAUSE OF ACTION Violation of Procedural Due Process, 42 U.S.C. § 1983

7.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

7.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.8 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.9 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.10 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

7.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

### VIII. SIXTH CAUSE OF ACTION Infliction of Emotional Distress

8.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

8.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

8.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

8.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

8.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

8.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

8.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

**IX. SEVENTH CAUSE OF ACTION**  
**Intentional Interference with Business Relationship**

9.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

9.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.8 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.9 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.10 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.12 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

1 9.13 The allegation calls for a conclusion of law and therefore no answer is required. To the  
2 extent that an answer is deemed necessary, the allegation is denied.

3 9.14 The allegation calls for a conclusion of law and therefore no answer is required. To the  
4 extent that an answer is deemed necessary, the allegation is denied.

5 9.15 The allegation calls for a conclusion of law and therefore no answer is required. To the  
6 extent that an answer is deemed necessary, the allegation is denied.

7 9.16 The allegation calls for a conclusion of law and therefore no answer is required. To the  
8 extent that an answer is deemed necessary, the allegation is denied.

9 9.17 The allegation calls for a conclusion of law and therefore no answer is required. To the  
10 extent that an answer is deemed necessary, the allegation is denied.

11 9.18 The allegation calls for a conclusion of law and therefore no answer is required. To the  
12 extent that an answer is deemed necessary, the allegation is denied.

13 9.19 The allegation calls for a conclusion of law and therefore no answer is required. To the  
14 extent that an answer is deemed necessary, the allegation is denied.

15 9.20 The allegation calls for a conclusion of law and therefore no answer is required. To the  
16 extent that an answer is deemed necessary, the allegation is denied.

17 9.21 The allegation calls for a conclusion of law and therefore no answer is required. To the  
18 extent that an answer is deemed necessary, the allegation is denied.

19 9.22 The allegation calls for a conclusion of law and therefore no answer is required. To the  
20 extent that an answer is deemed necessary, the allegation is denied.

21 9.23 The allegation calls for a conclusion of law and therefore no answer is required. To the  
22 extent that an answer is deemed necessary, the allegation is denied.

23 9.24 The allegation calls for a conclusion of law and therefore no answer is required. To the  
24 extent that an answer is deemed necessary, the allegation is denied.

25 9.25 The allegation calls for a conclusion of law and therefore no answer is required. To the  
26 extent that an answer is deemed necessary, the allegation is denied.

9.26 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.27 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.28 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.29 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.30 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

9.31 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

## X. EIGHTH CAUSE OF ACTION Defamation

10.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

10.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

10.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

10.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

10.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

10.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

1 10.7 The allegation calls for a conclusion of law and therefore no answer is required. To the  
2 extent that an answer is deemed necessary, the allegation is denied.

3 10.8 The allegation calls for a conclusion of law and therefore no answer is required. To the  
4 extent that an answer is deemed necessary, the allegation is denied.

5 10.9 The allegation is directed to a co-defendant and therefore no answer is necessary.

6 10.10 The allegation calls for a conclusion of law and therefore no answer is required. To the  
7 extent that an answer is deemed necessary, the allegation is denied.

8 10.11 The allegation calls for a conclusion of law and therefore no answer is required. To the  
9 extent that an answer is deemed necessary, the allegation is denied.

10 10.12 The allegation calls for a conclusion of law and therefore no answer is required. To the  
11 extent that an answer is deemed necessary, the allegation is denied.

12 10.13 The allegation calls for a conclusion of law and therefore no answer is required. To the  
13 extent that an answer is deemed necessary, the allegation is denied.

14 10.14 The allegation calls for a conclusion of law and therefore no answer is required. To the  
15 extent that an answer is deemed necessary, the allegation is denied.

16 10.15 The allegation calls for a conclusion of law and therefore no answer is required. To the  
17 extent that an answer is deemed necessary, the allegation is denied.

18 10.16 The allegation calls for a conclusion of law and therefore no answer is required. To the  
19 extent that an answer is deemed necessary, the allegation is denied.

20 10.17 The allegation calls for a conclusion of law and therefore no answer is required. To the  
21 extent that an answer is deemed necessary, the allegation is denied.

22 10.18 The allegation calls for a conclusion of law and therefore no answer is required. To the  
23 extent that an answer is deemed necessary, the allegation is denied.

24 10.19 The allegation calls for a conclusion of law and therefore no answer is required. To the  
25 extent that an answer is deemed necessary, the allegation is denied.  
26

10.20 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

### XI. NINTH CAUSE OF ACTION

11.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

11.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.8 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.9 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.10 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.11 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.12 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

11.13 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

**XII. TENTH CAUSE OF ACTION**  
**Violation of the Washington Law Against Discrimination (Racial Discrimination)**

12.1 Defendants incorporate their preceding answers to Plaintiff's preceding allegations by reference as if fully set forth.

12.2 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

12.3 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

12.4 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

12.5 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

12.6 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

12.7 The allegation calls for a conclusion of law and therefore no answer is required. To the extent that an answer is deemed necessary, the allegation is denied.

**XIII. PRAYER FOR RELIEF**

1. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.



2. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
3. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
4. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
5. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
6. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
7. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
8. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
9. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.

10. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
11. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
12. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
13. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
14. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
15. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
16. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.
17. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.

18. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.

19. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.

20. The allegation is a prayer for relief and therefore no answer is required. To the extent an answer is deemed necessary, Defendants deny that the Plaintiff is entitled to any relief whatsoever.

#### XIV. AFFIRMATIVE DEFENSES

By Way of FURTHER ANSWER and AFFIRMATIVE DEFENSE, Defendants allege:

1. SERVICE OF PROCESS - The summons and complaint were never properly served upon some or all of the Defendants.

2. VENUE – The county in which this action was commenced is not the proper venue for said action.

3. CLAIM FILING – Plaintiff has failed to properly file a claim against the State of Washington and/or some or all of the Defendants as required by RCW 4.92.100 and .110.

4. EXHAUSTION OF ADMINISTRATIVE REMEDIES – Plaintiff has failed to exhaust administrative remedies or Plaintiff's remedy is administrative rather than judicial and therefore the action will not lie.

5. STATUTE OF LIMITATIONS – Some or all of Plaintiff's claims are barred by the statute of limitations.

6. GOOD FAITH - Defendants at all times acted in good faith in the performance of their duties and are therefore immune from suit for the matters charged in Plaintiff's complaint.

7. MITIGATION OF DAMAGES – If Plaintiff suffered any damages, recovery therefore is barred by Plaintiff's failure to mitigate said damages.

8. QUALIFIED IMMUNITY – The claims alleged under 42 U.S.C. § 1983 against the state employees are barred by the doctrine of qualified immunity.

WHEREFORE, Defendants pray that Plaintiff's complaint be dismissed with prejudice as to the Washington State Criminal Justice Training Commission, City of Spokane, Rick Bowen, John Everly, Art Dollard, Jake Jensen, Todd Belitz and Sue Rahr, and that Plaintiff take nothing by his complaint and that Defendants be allowed their costs and reasonable attorney fees herein.

In the event this case proceeds to trial, Defendants demand that this case be tried to a jury.

DATED this 28th day of May, 2020.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring  
CARL P. WARRING  
WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington  
State Criminal Justice Training  
Commission, City Of Spokane,  
Rick Bowen, John Everly,  
Art Dollard, Jake Jensen,  
Todd Belitz And Sue Rahr  
1116 W Riverside, Suite 100  
Spokane, WA 99201  
(509) 456-3123  
[carlw@atg.wa.gov](mailto:carlw@atg.wa.gov)

**PROOF OF SERVICE**

I certify that I electronically filed the above document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Allison Rhone Foreman	<a href="mailto:allison@fhbzlaw.com">allison@fhbzlaw.com</a>
Nathan Arnold	<a href="mailto:nathan@cajlawyers.com">nathan@cajlawyers.com</a>
Michael McFarland	<a href="mailto:mmcfarland@ecl-law.com">mmcfarland@ecl-law.com</a>
Jerry Moberg	<a href="mailto:jmoberg@mrklawgroup.com">jmoberg@mrklawgroup.com</a>
Mary Moberg Rathbone	<a href="mailto:mrathbone@marklawgroup.com">mrathbone@marklawgroup.com</a>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 28th day of May, 2020, at Spokane, Washington.

ROBERT W. FERGUSON  
Attorney General

s/Carl P. Warring  
CARL P. WARRING  
WSBA No. 27164  
Assistant Attorney General  
Attorney for Defendants Washington  
State Criminal Justice Training  
Commission, City Of Spokane,  
Rick Bowen, John Everly,  
Art Dollard, Jake Jensen,  
Todd Belitz And Sue Rahr  
1116 W Riverside, Suite 100  
Spokane, WA 99201  
(509) 456-3123  
[carlw@atg.wa.gov](mailto:carlw@atg.wa.gov)

MICHAEL E. McFARLAND, JR., #23000  
 Evans, Craven & Lackie, P.S.  
 818 W. Riverside, Suite 250  
 Spokane, WA 99201-0910  
 (509) 455-5200; fax (509) 455-3632  
 Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF WASHINGTON

JOHN J. CRUZ,

Plaintiff,

vs.

US District Court for Western District of  
 Washington Case No. 2:20-cv-00729

FERRY COUNTY; the CITY OF  
 REPUBLIC, a municipal corporation; the  
 CITY OF SPOKANE, a municipal  
 corporation; the WASHINGTON STATE  
 CRIMINAL JUSTICE TRAINING  
 COMMISSION, a state commission; RAY  
 MAYCUMBER, Ferry County Sheriff; AMY  
 ROOKER, Ferry County Chief Civil Deputy;  
 AUSTIN HERSHAW, Police Officer at the  
 Black Diamond Police Department;  
 PATRICK RAINER, Detective at the Ferry  
 County Sheriff's Office; RICK BOWEN,  
 Commander of the Washington State  
 Criminal Justice Training Commission Basic  
 Law Enforcement Academy; JOHN  
 EVERLY, Police Officer at the Spokane  
 Police Department and Assistant Commander  
 of the Washington State Criminal Justice  
 Training Commission Basic Law  
 Enforcement Academy; ART DOLLARD,  
 Police Officer at the Spokane Police  
 Department and TAC Officer at the  
 Washington State Criminal Justice Training  
 Commission Basic Law Enforcement  
 Academy; JAKE JENSEN, Police Officer at  
 the Spokane Police Department and TAC  
 Officer at the Washington State Criminal  
 Justice Training Commission Basic Law

King County Superior Court Cause No. 20-2-  
 07720-8 SEA

CERTIFICATE OF MICHAEL E.  
 MCFARLAND, JR.

CERTIFICATE OF MICHAEL E. MCFARLAND, JR. - page 1

*Evans, Craven & Lackie, P.S.*  
 818 W. Riverside, Suite 250  
 Spokane, WA 99201-0910  
 (509) 455-5200; fax (509) 455-3632

1 Enforcement Academy; TODD BELITZ,  
2 Police Officer at the Spokane Police  
3 Department and TAC Officer at the  
4 Washington State Criminal Justice Training  
5 Commission Basic Law Enforcement  
6 Academy; and SUE RAHR, Executive  
7 Director of the Washington State Criminal  
Justice Training Commission,  
Defendants.

8 I, Michael E. McFarland, Jr., certify under penalty of perjury under the laws of the  
9 United States and State of Washington that the following is true and correct to the best of my  
10 knowledge:  
11

12 I am the attorney of record for Defendants Ferry County, Sheriff Ray Maycumber,  
13 Amy Rooker, Patrick Rainer, and Austin Hershaw in the above-entitled matter and am  
14 competent to testify to the facts set forth herein:  
15

16 1. Attached hereto as **Exhibit A** is a true and correct copy of the Summons served  
17 on Ferry County on or about May 1, 2020.  
18

19 2. Attached hereto as **Exhibit B** is a true and correct copy of the Summons for  
20 Ray Maycumber that was served on the Ferry County auditor on or about May 1, 2020.

21 3. Attached hereto as **Exhibit C** is a true and correct copy of the Summons for  
22 Amy Rooker that was served on the Ferry County auditor on or about May 1, 2020.  
23

24 4. Attached hereto as **Exhibit D** is a true and correct copy of the Summons for  
25 Patrick Rainer that was served on the Ferry County auditor on or about May 1, 2020.  
26

27 5. Attached hereto as **Exhibit E** is a true and correct copy of the Summons served  
28 on Austin Hershaw on May 13, 2020.  
29

30 CERTIFICATE OF MICHAEL E. MCFARLAND, JR. - page 2

*Evans, Craven & Lackie, P.S.*  
818 W. Riverside, Suite 250  
Spokane, WA 99201-0910  
(509) 455-5200; fax (509) 455-3632

1           6.       Attached hereto as **Exhibit F** is a true and correct copy of the Complaint filed  
2 by Plaintiff on April 10, 2020 in King County Superior Court. The action was given cause  
3 number 20-2-07720-8 SEA.  
4

5           7.       On May 5, 2020, Jerry Moberg, counsel for Defendant City of Republic,  
6 advised me that his client consents to this matter being removed to federal court.  
7

8           8.       Mr. Moberg filed a notice of appearance on May 5, 2020. A true and correct  
9 copy of the same is attached hereto as **Exhibit G**.

10          9.       Washington State Assistant Attorney General Carl Warring will be appearing in  
11 this case on behalf of the Washington State Criminal Justice Training Commission, the City of  
12 Spokane and its officers/employees. On May 13, 2020, Mr. Warring advised me that his  
13 clients consent to this matter being removed to federal court.  
14

15          10.      With the consents provided by Mr. Moberg and Mr. Warring, all defendants  
16 consent to the removal of this action to federal court.  
17

18          11.      Once removed, all defendants will be filing a joint motion to transfer this  
19 matter to the Eastern District.  
20

21               DATED this 14th day of May, 2020.

22                               EVANS, CRAVEN & LACKIE, P.S.  
23

24  
25                               By: /s/Michael E. McFarland  
26                               MICHAEL E. McFARLAND, JR., #23000  
27                               Attorneys for Ferry County Defendants  
28  
29

30   CERTIFICATE OF MICHAEL E. McFARLAND, JR. - page 3

*Evans, Craven & Lackie, P.S.*  
818 W. Riverside, Suite 250  
Spokane, WA 99201-0910  
(509) 455-5200; fax (509) 455-3632



**CERTIFICATE OF SERVICE**

I hereby certify that on May 14th, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

*No Electronic Recipients*

I hereby further certify that I have caused to be served a true and correct copy of the foregoing document(s) on the non-CM/ECF participants as indicated:

**Counsel for Plaintiff**

Allison R. Foreman	Via Regular Mail	[ ]
Foreman, Hotchkiss, Bauscher	Via Certified Mail	[ ]
& Zimmerman, PLLC	Via Overnight Mail	[ ]
124 N. Wenatchee Avenue, Suite A	Via Facsimile	[ ]
P.O. Box 3125	Hand Delivered	[ ]
Wenatchee, WA 98807	Via Email	[X]
Email: <a href="mailto:allison@fzbzlaw.com">allison@fzbzlaw.com</a>		

**Counsel for Plaintiff**

Nathan J. Arnold	Via Regular Mail	[ ]
Cloutier Arnold Jacobowitz, PLLC	Via Certified Mail	[ ]
2701 First Avenue, Suite 200	Via Overnight Mail	[ ]
Seattle, WA 98121	Via Facsimile	[ ]
Hand Delivered	[ ]	
Email: <a href="mailto:nathan@CAJlawyers.com">nathan@CAJlawyers.com</a>	Via Email	[X]

**Counsel for City of Republic**

Jerry Moberg		
Mary Rathbone	Via Regular Mail	[ ]
Moberg Rathbone Kearns	Via Certified Mail	[ ]
124 3 <sup>rd</sup> Avenue SW	Via Overnight Mail	[ ]
P.O. Box 130	Via Facsimile	[ ]
Ephrata, WA 98823	Hand Delivered	[ ]
Email: <a href="mailto:jmoberg@mrklawgroup.com">jmoberg@mrklawgroup.com</a>	Via Email	[X]
Email: <a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>		

s/ Michael E. McFarland, Jr.  
 MICHAEL E. McFARLAND, #23000  
 Attorney for Defendants  
 Evans, Craven & Lackie, P.S.

CERTIFICATE OF MICHAEL E. McFARLAND, JR. - page 4

*Evans, Craven & Lackie, P.S.*  
 818 W. Riverside, Suite 250  
 Spokane, WA 99201-0910  
 (509) 455-5200; fax (509) 455-3632

818 W. Riverside Ave., Suite 250  
Spokane, Washington 99201  
(509) 455-5200  
(509) 455-3632 Facsimile  
[MMcFarland@ecl-law.com](mailto:MMcFarland@ecl-law.com)

CERTIFICATE OF MICHAEL E. MCFARLAND, JR. - page 5

*Evans, Craven & Lackie, P.S.*  
818 W. Riverside, Suite 250  
Spokane, WA 99201-0910  
(509) 455-5200; fax (509) 455-3632

# Exhibit A

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, Police Officer at the Black  
Diamond Police Department; PATRICK  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at the  
Spokane Police Department and TAC Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the

NO. 20-2-07720-8 SEA

SUMMONS

SUMMONS - 1

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

1 Washington State Criminal Justice Training  
2 Commission Basic Law Enforcement Academy;  
3 and SUE RAHR, Executive Director of the  
4 Washington State Criminal Justice Training  
5 Commission,

6 Defendants.

7 THE STATE OF WASHINGTON TO: FERRY COUNTY  
8

9 A lawsuit has been started against you in the above-entitled Court by JOHN  
10 CRUZ, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is  
11 served upon you with this Summons.

12 You are Hereby Summoned to appear within twenty (20) days after service of this  
13 Summons, if served within the state of Washington, or within sixty (60) days if served  
14 outside the state of Washington, exclusive of the day of service, and defend the above  
15 entitled action by serving a copy of your written appearance or defense upon the under-  
16 signed or a Default Judgment may be entered against you without notice. A Default  
17 Judgment is one where Plaintiff is entitled to what he asks for because you have not re-  
18 sponded. If you serve a Notice of Appearance on the undersigned attorney, you are enti-  
19 tled to notice before a Default Judgment may be entered.  
20

21 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,  
22 the demand must be in writing and must be served upon the Plaintiff. Within fourteen  
23 (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,  
24 or the service on you of this Summons and Complaint will be void.  
25

26 If you wish to seek the advice of any attorney in this matter, you should do so  
27 promptly so that your written response, if any, may be served on time.  
28

29 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of  
30

31 SUMMONS - 2

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

1 the State of Washington.  
2  
3

4 **DATED** this 10th day of April 2020.  
5

6 **FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC**  
7

8 /s/ Allison R. Foreman  
9 Allison R. Foreman, WSBA #41967  
10 Zimmerman, PLLC  
11 124 N. Wenatchee, Ave., Suite A  
12 P. O. Box 3125  
13 Wenatchee, WA 98807  
14 (509) 662-9602; Fax (509) 662-9606  
15 Allison@fhbzlaw.com  
16 Attorney for Plaintiff

17  
18 **CLOUTIER ARNOLD JACOBOWITZ, PLLC**  
19

20 /s/ Nathan J. Arnold  
21 Nathan J. Arnold, WSBA #45356  
22 Cloutier Arnold Jacobowitz, PLLC  
23 2701 First Avenue, Suite 200  
24 Seattle, WA 98121  
25 (206) 866-3230, Fax (206) 866-3234  
26 Nathan@CAJlawyers.com  
27 Attorney for Plaintiff  
28  
29  
30  
31

SUMMONS - 3

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

# **Exhibit B**

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, Police Officer at the Black  
Diamond Police Department; PATRICK  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at the  
Spokane Police Department and TAC Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the

NO. 20-2-07720-8 SEA

SUMMONS

SUMMONS - 1

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602 / FAX (509) 662-9606



1 Washington State Criminal Justice Training  
2 Commission Basic Law Enforcement Academy;  
3 and SUE RAHR, Executive Director of the  
4 Washington State Criminal Justice Training  
5 Commission,

6 Defendants.

7 THE STATE OF WASHINGTON TO: RAY MAYCUMBER  
8

9 A lawsuit has been started against you in the above-entitled Court by JOHN  
10 CRUZ, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is  
11 served upon you with this Summons.  
12

13 You are Hereby Summoned to appear within twenty (20) days after service of this  
14 Summons, if served within the state of Washington, or within sixty (60) days if served  
15 outside the state of Washington, exclusive of the day of service, and defend the above  
16 entitled action by serving a copy of your written appearance or defense upon the under-  
17 signed or a Default Judgment may be entered against you without notice. A Default  
18 Judgment is one where Plaintiff is entitled to what he asks for because you have not re-  
19 sponded. If you serve a Notice of Appearance on the undersigned attorney, you are enti-  
20 tled to notice before a Default Judgment may be entered.  
21

22 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,  
23 the demand must be in writing and must be served upon the Plaintiff. Within fourteen  
24 (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,  
25 or the service on you of this Summons and Complaint will be void.  
26

27 If you wish to seek the advice of any attorney in this matter, you should do so  
28 promptly so that your written response, if any, may be served on time.  
29

30 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of  
31

SUMMONS - 2

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

1 the State of Washington.  
2  
3

4 DATED this 10th day of April 2020.  
5

6 FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
7

8 /s/ Allison R. Foreman  
9 Allison R. Foreman, WSBA #41967  
10 Zimmerman, PLLC  
11 124 N. Wenatchee, Ave., Suite A  
12 P. O. Box 3125  
13 Wenatchee, WA 98807  
14 (509) 662-9602; Fax (509) 662-9606  
15 Allison@fhbzlaw.com  
16 Attorney for Plaintiff

17  
18 CLOUTIER ARNOLD JACOBOWITZ, PLLC  
19

20 /s/ Nathan J. Arnold  
21 Nathan J. Arnold, WSBA #45356  
22 Cloutier Arnold Jacobowitz, PLLC  
23 2701 First Avenue, Suite 200  
24 Seattle, WA 98121  
25 (206) 866-3230, Fax (206) 866-3234  
26 Nathan@CAJlawyers.com  
27 Attorney for Plaintiff  
28  
29  
30  
31

SUMMONS - 3

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

# Exhibit C

COUNTY AUDITOR  
RECEIVED

11:27 AM

MAY 01 2020

AND FILED  
FERRY COUNTY WASHINGTON

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, Police Officer at the Black  
Diamond Police Department; PATRICK  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at the  
Spokane Police Department and TAC Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the

NO. 20-2-07720-8 SEA

SUMMONS

SUMMONS - 1

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

1 Washington State Criminal Justice Training  
2 Commission Basic Law Enforcement Academy;  
3 and SUE RAHR, Executive Director of the  
4 Washington State Criminal Justice Training  
5 Commission,

6  
7 Defendants.

8  
9 THE STATE OF WASHINGTON TO: AMY ROOKER

10 A lawsuit has been started against you in the above-entitled Court by JOHN  
11 CRUZ, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is  
12 served upon you with this Summons.

13 You are Hereby Summoned to appear within twenty (20) days after service of this  
14 Summons, if served within the state of Washington, or within sixty (60) days if served  
15 outside the state of Washington, exclusive of the day of service, and defend the above  
16 entitled action by serving a copy of your written appearance or defense upon the under-  
17 signed or a Default Judgment may be entered against you without notice. A Default  
18 Judgment is one where Plaintiff is entitled to what he asks for because you have not re-  
19 sponded. If you serve a Notice of Appearance on the undersigned attorney, you are enti-  
20 tled to notice before a Default Judgment may be entered.

21  
22 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,  
23 the demand must be in writing and must be served upon the Plaintiff. Within fourteen  
24 (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,  
25 or the service on you of this Summons and Complaint will be void.

26  
27 If you wish to seek the advice of any attorney in this matter, you should do so  
28 promptly so that your written response, if any, may be served on time.

29  
30 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of

31  
SUMMONS - 2

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

1 the State of Washington.

2  
3  
4 DATED this 10th day of April 2020.

5  
6 FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC

7  
8 /s/ Allison R. Foreman

9 Allison R. Foreman, WSBA #41967  
10 Zimmerman, PLLC  
11 124 N. Wenatchee, Ave., Suite A  
12 P. O. Box 3125  
13 Wenatchee, WA 98807  
14 (509) 662-9602; Fax (509) 662-9606  
15 Allison@fhbzlaw.com  
16 Attorney for Plaintiff

17  
18 CLOUTIER ARNOLD JACOBOWITZ, PLLC

19  
20 /s/ Nathan J. Arnold

21 Nathan J. Arnold, WSBA #45356  
22 Cloutier Arnold Jacobowitz, PLLC  
23 2701 First Avenue, Suite 200  
24 Seattle, WA 98121  
25 (206) 866-3230, Fax (206) 866-3234  
26 Nathan@CAJlawyers.com  
27 Attorney for Plaintiff

28  
29  
30  
31  
SUMMONS - 3

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

# Exhibit D



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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, Police Officer at the Black  
Diamond Police Department; PATRICK  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at the  
Spokane Police Department and TAC Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the

NO. 20-2-07720-8 SEA

SUMMONS

SUMMONS - 1

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
124 N. WENATCHEE AVE., STE. A  
WENATCHEE, WASHINGTON 98801  
(509) 662-9602 / FAX (509) 662-9606



1 Washington State Criminal Justice Training  
2 Commission Basic Law Enforcement Academy;  
3 and SUE RAHR, Executive Director of the  
4 Washington State Criminal Justice Training  
5 Commission,

Defendants.

6  
7 THE STATE OF WASHINGTON TO: PATRICK RAINER

8  
9 A lawsuit has been started against you in the above-entitled Court by JOHN  
10 CRUZ, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is  
11 served upon you with this Summons.

12  
13 You are Hereby Summoned to appear within twenty (20) days after service of this  
14 Summons, if served within the state of Washington, or within sixty (60) days if served  
15 outside the state of Washington, exclusive of the day of service, and defend the above  
16 entitled action by serving a copy of your written appearance or defense upon the under-  
17 signed or a Default Judgment may be entered against you without notice. A Default  
18 Judgment is one where Plaintiff is entitled to what he asks for because you have not re-  
19 sponded. If you serve a Notice of Appearance on the undersigned attorney, you are enti-  
20 tled to notice before a Default Judgment may be entered.

21  
22 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,  
23 the demand must be in writing and must be served upon the Plaintiff. Within fourteen  
24 (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,  
25 or the service on you of this Summons and Complaint will be void.

26  
27 If you wish to seek the advice of any attorney in this matter, you should do so  
28 promptly so that your written response, if any, may be served on time.

29  
30 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of  
31

SUMMONS - 2

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
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WENATCHEE, WASHINGTON 98801  
(509) 662-9602/ FAX (509) 662-9606

1 the State of Washington.  
2  
3

4 DATED this 10th day of April 2020.  
5

6 FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
7

8 /s/ Allison R. Foreman

9 Allison R. Foreman, WSBA #41967  
10 Zimmerman, PLLC  
11 124 N. Wenatchee, Ave., Suite A  
12 P. O. Box 3125  
13 Wenatchee, WA 98807  
14 (509) 662-9602; Fax (509) 662-9606  
15 Allison@fzbzlaw.com  
16 Attorney for Plaintiff

17  
18 CLOUTIER ARNOLD JACOBOWITZ, PLLC  
19

20 /s/ Nathan J. Arnold

21 Nathan J. Arnold, WSBA #45356  
22 Cloutier Arnold Jacobowitz, PLLC  
23 2701 First Avenue, Suite 200  
24 Seattle, WA 98121  
25 (206) 866-3230, Fax (206) 866-3234  
26 Nathan@CAJlawyers.com  
27 Attorney for Plaintiff  
28  
29  
30  
31

SUMMONS - 3

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# **Exhibit E**

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

JOHN J. CRUZ,

NO. 20-2-07720-8 SEA

Plaintiff,

SUMMONS

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, Police Officer at the Black  
Diamond Police Department; PATRICK  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at the  
Spokane Police Department and TAC Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the

SUMMONS - 1

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
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1 Washington State Criminal Justice Training  
 2 Commission Basic Law Enforcement Academy;  
 3 and SUE RAHR, Executive Director of the  
 4 Washington State Criminal Justice Training  
 Commission,

5 Defendants.

6  
 7 THE STATE OF WASHINGTON TO: AUSTIN HERSHAW  
 8

9 A lawsuit has been started against you in the above-entitled Court by JOHN  
 10 CRUZ, Plaintiff. Plaintiff's claim is stated in the written Complaint, a copy of which is  
 11 served upon you with this Summons.  
 12

13 You are Hereby Summoned to appear within twenty (20) days after service of this  
 14 Summons, if served within the state of Washington, or within sixty (60) days if served  
 15 outside the state of Washington, exclusive of the day of service, and defend the above  
 16 entitled action by serving a copy of your written appearance or defense upon the under-  
 17 signed or a Default Judgment may be entered against you without notice. A Default  
 18 Judgment is one where Plaintiff is entitled to what he asks for because you have not re-  
 19 sponded. If you serve a Notice of Appearance on the undersigned attorney, you are enti-  
 20 tled to notice before a Default Judgment may be entered.  
 21

22 You may demand that the Plaintiff file this lawsuit with the Court. If you do so,  
 23 the demand must be in writing and must be served upon the Plaintiff. Within fourteen  
 24 (14) days after you serve the demand, the Plaintiff must file this lawsuit with the Court,  
 25 or the service on you of this Summons and Complaint will be void.  
 26

27 If you wish to seek the advice of any attorney in this matter, you should do so  
 28 promptly so that your written response, if any, may be served on time.  
 29

30 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of  
 31

SUMMONS - 2

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
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 WENATCHEE, WASHINGTON 98801  
 (509) 662-9602/ FAX (509) 662-9606

1 the State of Washington.  
2  
3

4 DATED this 10th day of April 2020.  
5

6 FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
7

8 /s/ Allison R. Foreman

9 Allison R. Foreman, WSBA #41967  
10 Zimmerman, PLLC  
11 124 N. Wenatchee, Ave., Suite A  
12 P. O. Box 3125  
13 Wenatchee, WA 98807  
14 (509) 662-9602; Fax (509) 662-9606  
15 Allison@fhbzlaw.com  
16 Attorney for Plaintiff

17  
18 CLOUTIER ARNOLD JACOBOWITZ, PLLC  
19

20 /s/ Nathan J. Arnold

21 Nathan J. Arnold, WSBA #45356  
22 Cloutier Arnold Jacobowitz, PLLC  
23 2701 First Avenue, Suite 200  
24 Seattle, WA 98121  
25 (206) 866-3230, Fax (206) 866-3234  
26 Nathan@CAJlawyers.com  
27 Attorney for Plaintiff  
28  
29  
30  
31

SUMMONS - 3

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# Exhibit F

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING**

JOHN J. CRUZ,

Plaintiff,

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, Police Officer at the Black  
Diamond Police Department; PATRICK  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at the  
Spokane Police Department and TAC Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSEN, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the

**NO.**

VERIFIED COMPLAINT  
FOR DAMAGES

VERIFIED COMPLAINT FOR DAMAGES - 1

**FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC**  
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(509) 662-9602/ FAX (509) 662-9606



Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
and SUE RAHR, Executive Director of the  
Washington State Criminal Justice Training  
Commission,

Defendants.

COMES NOW the Plaintiff, JOHN J. CRUZ, by and through his attorneys of record,  
Allison R. Foreman of Foreman, Appel, Hotchkiss, Zimmerman & Bauscher, PLLC, and  
Nathan J. Arnold of Cloutier Arnold Jacobowitz PLLC, and alleges and states as follows:

### **I. PARTIES, JURISDICTION, AND VENUE**

1.1 Plaintiff John J. Cruz ("Plaintiff") resides in King County, Washington. He was born  
on June 1, 1979.

1.2 Defendant Ferry County ("Ferry County") is a county located in the State of Wash-  
ington. Its county seat is located in Republic, Ferry County, Washington.

1.3 Defendant the City of Republic ("Republic") is a municipal corporation located in  
Ferry County, Washington.

1.4 Defendant the City of Spokane ("Spokane") is a municipal corporation located in  
Spokane County, Washington.

1.5 Defendant the Washington State Criminal Justice Training Commission ("CJTC")  
is a state commission formed under the laws of the State of Washington. Its office and  
primary place of business are located in King County, Washington.

1.6 Defendant Ray Maycumber ("Sheriff Maycumber") is the Sheriff of Ferry County,  
Washington. On information and belief, Sheriff Maycumber currently resides in Ferry  
County, Washington.

1.7 Defendant Amy Rooker ("Deputy Rooker") is the Chief Civil Deputy of Ferry  
County, Washington. On information and belief, Deputy Rooker currently resides in Ferry  
County, Washington.

1.8 Defendant Austin Hershaw ("Deputy Hershaw") is a police officer employed by the  
Black Diamond Police Department. At all times relevant to the events complained of  
herein, Deputy Hershaw was a deputy sheriff employed by the Ferry County Sheriff's

VERIFIED COMPLAINT FOR DAMAGES - 2

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Office. On information and belief, Deputy Hershaw currently resides in King County, Washington.

1.9 Defendant Patrick Rainer ("Detective Rainer") is a detective employed by the Ferry County Sheriff's Office. On information and belief, Detective Rainer currently resides in Ferry County, Washington.

1.10 Defendant Rick Bowen ("Commander Bowen") is the Commander of the CJTC Basic Law Enforcement Academy ("BLEA" or "Academy") in Spokane. On information and belief, Commander Bowen currently resides in Spokane County, Washington.

1.11 Defendant John Everly ("Assistant Commander Everly") is a police officer employed by the Spokane Police Department ("Spokane PD") and the Assistant Commander of the CJTC BLEA in Spokane. On information and belief, Assistant Commander Everly currently resides in Spokane County, Washington.

1.12 Defendant Art Dollard ("Officer Dollard") is a police officer employed by the Spokane PD and a TAC Officer at the CJTC BLEA in Spokane. On information and belief, Officer Dollard currently resides in Spokane County, Washington.

1.13 Defendant Jake Jensen ("Officer Jensen") is a police officer employed by the Spokane PD and a TAC Officer at the CJTC BLEA in Spokane. On information and belief, Officer Jensen currently resides in Spokane County, Washington.

1.14 Defendant Todd Belitz ("Officer Belitz") is a TAC Officer at the CJTC BLEA located in Spokane. On information and belief, Officer Belitz currently resides in Spokane County, Washington.

1.15 Defendant Sue Rahr ("Executive Director Rahr") is the Executive Director of the CJTC. On information and belief, Executive Director Rahr currently resides in King County, Washington.

1.16 Jurisdiction and venue are proper herein pursuant to RCW 4.12.020(3).

## II. FACTS SUPPORTING CLAIMS

2.1 Plaintiff realleges each and every allegation as set forth above.

2.2 Plaintiff was employed as a police officer by the Republic Police Department ("Republic PD") from September 1, 2016 until June 23, 2017.

2.3 Plaintiff is Hispanic.

2.4 Plaintiff was frequently the butt of racial jokes and the subject of derogatory, racist

VERIFIED COMPLAINT FOR DAMAGES - 3

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1. comments during his employment. These jokes and comments were made by police of-  
 2. ficers employed by the Republic PD and employees of the Ferry County Sheriff's Office.

3. 2.5 Detective Rainer made business cards for Plaintiff that included a Mexican som-  
 4.brero emoji and a large mustache.

5. 2.6 Deputy Talon Venturo ("Deputy Venturo"), a deputy sheriff employed by the Ferry  
 6. County Sheriff's Office, often called Plaintiff "Brown Sugar," making a racist reference to  
 7. the color of Plaintiff's skin, while Deputy Venturo was on duty.

8. 2.7 Deputy Hershaw and Detective Rainer also made racially-specific remarks and  
 9. jokes about Plaintiff while they were on duty.

10. 2.8 Deputy Hershaw and Detective Rainer are close friends.

11. 2.9 Deputy Hershaw and Deputy Venturo are cousins.

12. 2.10 Deputy Hershaw attended the CJTC BLEA in Spokane before 2017. His instruc-  
 13. tors at the CJTC BLEA were Officer Dollard and Assistant Commander Everly.

14. 2.11 On information and belief, Detective Rainer also attended the CJTC BLEA in Spo-  
 15. kane before 2017.

16. 2.12 Plaintiff signed up for the CJTC BLEA for the course beginning in February 2017.

17. 2.13 In January 2017, prior to Plaintiff's start date at the CJTC BLEA in Spokane, Bri-  
 18. tany A. Mumford, a dispatcher at the Ferry County Dispatch Center, told Plaintiff that Dep-  
 19. uty Hershaw had sexual relations with one Randi Torchesky on the back of his patrol  
 20. vehicle while on duty and in uniform on July 31, 2016.

21. 2.14 Plaintiff immediately reported Deputy Hershaw's sexual misconduct to Detective  
 22. Rainer. He did so in good faith, believing that Ms. Mumford was telling the truth. Ms.  
 23. Mumford confirmed to Detective Rainer that she had heard about it directly from Ms.  
 24. Torchesky.

25. 2.15 Detective Rainer subsequently called Ms. Torchesky and interviewed Deputy Her-  
 26. shaw, both of whom denied the incident.

27. 2.16 Detective Rainer communicated Plaintiff's report about Deputy Hershaw's sexual  
 28. misconduct to Sheriff Maycumber.

29. 2.17 Sheriff Maycumber refused to investigate Deputy Hershaw's sexual misconduct  
 30. and instead referred the investigation to the Washington State Patrol.

31. 2.18 Deputy Hershaw was furious at Plaintiff for reporting his sexual misconduct to

VERIFIED COMPLAINT FOR DAMAGES - 4

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1 Detective Rainer.

2 2.19 Later in January 2017, Deputy Hershaw returned to the CJTC BLEA in Spokane  
3 to pick up targets for firearms training in Ferry County. On information and belief, Deputy  
4 Hershaw told Assistant Commander Everly and Officer Dollard that Plaintiff had made  
5 false allegations against him and asked that they treat Plaintiff harshly during his time at  
6 the CJTC BLEA in Spokane. Deputy Hershaw made this request in order to get revenge  
7 on Plaintiff for reporting his sexual misconduct to Detective Rainer. His request was also  
8 motivated by racism against Plaintiff.

9 2.20 On information and belief, Detective Rainer also contacted staff and instructors at  
10 the CJTC BLEA in Spokane and asked them to treat Plaintiff harshly during his time at  
11 there. Detective Rainer made this request because he was Deputy Hershaw's close friend  
12 and wanted to punish Plaintiff for getting his friend in trouble. His request was also moti-  
13 vated by racism against Plaintiff.

14 2.21 Plaintiff started classes at the CJTC BLEA in Spokane in February 2017.

15 2.22 Plaintiff was consistently singled out for harsh treatment at the CJTC BLEA, espe-  
16 cially by Officer Dollard and Assistant Commander Everly.

17 2.23 During the third or fourth week of the CJTC Academy, Officer Dollard asked Plain-  
18 tiff in front of the entire BLEA class whether Plaintiff had submitted a required letter de-  
19 scribing his experience at the CJTC Academy to Loren Culp, Chief of the Republic Police  
20 Department ("Chief Culp"). Plaintiff verified that he had done so. Officer Dollard ques-  
21 tioned Plaintiff's integrity and accused him of lying. Officer Dollard demanded to see a  
22 copy of the letter, which Plaintiff produced. Officer Dollard then berated Plaintiff, again in  
23 front of the entire class, about the length of the letter, which Officer Dollard found unsatis-  
24 factory. No other recruits were interrogated or publicly criticized about their letters to their  
25 respective superiors.

26 2.24 As the CJTC Academy progressed, Plaintiff continued to be singled out for harsh  
27 treatment. During defensive tactics training, Plaintiff's mobile phone alarm went off inside  
28 his bag. Plaintiff shut off the alarm and returned to training. The class was in good spirits  
29 and Plaintiff was smiling. Officer Dollard noticed Plaintiff's expression and began yelling  
30 at Plaintiff and demanded to know why Plaintiff was smiling. Without waiting for an an-  
31 swer, Officer Dollard continued to berate and humiliate Plaintiff in front of the class. He

VERIFIED COMPLAINT FOR DAMAGES - 5

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1 demanded to know why Plaintiff's mobile phone was inside his bag and whether Plaintiff  
2 had permission for the phone to be there.

3 2.25 Many other recruits had their mobile phones ring or sound alarms during trainings.  
4 No other recruits were yelled at or berated by Officer Dollard or other instructors for it.

5 2.26 Plaintiff was on light duty during the CJTC Academy due to a previous leg injury.  
6 His medical providers recommended that he take a seat every 15 to 30 minutes.

7 2.27 During one class, Plaintiff sat down to relieve his injured leg. Officer Dollard yelled  
8 at Plaintiff in front of the entire class, "Cruz, get off your ass!" Officer Dollard ordered  
9 Plaintiff to stand in front of the class and teach it. Three other recruits were sitting down  
10 on the other side of the room but Officer Dollard did not yell at them or force them to stand  
11 in front of the class and teach it.

12 2.28 Plaintiff sustained a shoulder injury during rock drills and requested to see a doctor.  
13 Officer Dollard refused to allow Plaintiff to leave the CJTC Academy for several hours.  
14 Plaintiff, in pain, finally asked Assistant Commander Everly for permission to see a doctor.  
15 Assistant Commander Everly granted permission. Officer Dollard was visibly upset that  
16 Assistant Commander Everly had allowed Plaintiff to see a doctor for his shoulder injury.  
17 The doctor diagnosed Plaintiff with an AC joint separation and possible rotator cuff tear.  
18 Assistant Commander Everly later told Plaintiff that he had been mistaken in giving him  
19 permission to see a doctor. When Plaintiff asked Officer Belitz how the CJTC BLEA nor-  
20 mally handled recruit injuries, he looked away from Plaintiff and replied, with disgust, "We  
21 shut our mouths and we don't say anything."

22 2.29 Plaintiff was hazed by his instructors during his oleoresin capsicum (pepper spray)  
23 certification. Plaintiff did not go through the certification with the rest of the class because  
24 he was on light duty at the time. Instead, he was certified on a later date. He was singled  
25 out for harsh treatment right from the start of the certification. All other recruits were per-  
26 mitted to video record their pepper spray certifications, but Plaintiff was not permitted to  
27 do so. All other recruits were encouraged to cheer for their classmates during their pepper  
28 spray certifications. Prior to Plaintiff's certification, Officer Jensen instructed the other  
29 recruits not to look at Plaintiff, cheer him on or show any signs of encouragement. Officer  
30 Jensen told them, referring to Plaintiff, "He is a grown man and doesn't need a cheer  
31 section."

VERIFIED COMPLAINT FOR DAMAGES - 6

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1 2.30 Immediately before Plaintiff was sprayed, an instructor asked him whether he had  
 2 a ride home. While Plaintiff was answering the instructor's question, Officer Belitz inter-  
 3 rupted him and said, "Why don't you stop complaining. All you've done is complain the  
 4 last fifteen weeks. Shut up and do as you're told." Plaintiff replied, "Yes, sir."

5 2.31 All other recruits were sprayed by one (1) instructor. Plaintiff was sprayed by two  
 6 (2): Officers Dollard and Belitz. Plaintiff was sprayed more than any other recruit. He was  
 7 covered from the top of his head to below his chest.

8 2.32 After being sprayed, Plaintiff was required to complete an obstacle course. Plaintiff  
 9 injured the arch and heel of his foot while doing so.

10 2.33 After completing the obstacle course, Plaintiff was resting against a table with sev-  
 11 eral other recruits. Officer Dollard yelled at Plaintiff to get off the table. He did not yell at  
 12 the other recruits, who continued to rest against the table. Plaintiff complied with Officer  
 13 Dollard's command and sat down in a chair to relieve his injured foot. Officer Dollard  
 14 shouted at Plaintiff again. Officer Dollard ordered the other recruits to form a semi-circle  
 15 and forced Plaintiff to stand in front of the class like that for the rest of the class period.

16 2.34 Officer Dollard approached another instructor after spraying Plaintiff, placed his  
 17 arm around the instructor's shoulder and said, referring to their having sprayed Plaintiff,  
 18 "We got him good." Officer Dollard and the instructor smiled and bumped fists.

19 2.35 Officer Dollard continued to berate and embarrass Plaintiff as the CJTC Academy  
 20 progressed. He often raised Plaintiff's relationships and family life in front of the class.  
 21 When Plaintiff asked to keep his personal matters private, Officer Dollard refused and  
 22 continued to publicly criticize Plaintiff.

23 2.36 Plaintiff's initial partner at the academy was Recruit Jose Perez ("Recruit Perez"),  
 24 a police officer employed by the Tonasket Police Department. Recruit Perez is also His-  
 25 panic. Plaintiff and Recruit Perez had a good friendship and often communicated together  
 26 in Spanish. Staff and/or instructors at the CJTC BLEA removed Recruit Perez as Plaintiff's  
 27 partner and replaced him with a monolingual Caucasian recruit. No reason was given for  
 28 the replacement.

29 2.37 Other recruits commented on the unfair treatment that Plaintiff received.

30 2.38 Recruit Matthew Ponusky observed that Plaintiff "was yelled at and embarrassed  
 31 in front of the entire class for seemingly trivial things." Recruit Ponusky believed "[t]his

VERIFIED COMPLAINT FOR DAMAGES - 7

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1 was highly unprofessional and not a good example." It felt "wrong" to Recruit Ponusky  
2 and made him "view certain staff members in a negative way."

3 2.39 Another recruit stated that Officer Dollard "made it his mission to make [Plaintiff's]  
4 experience a living hell."

5 2.40 Although Officer Dollard had more contact with Plaintiff, Assistant Commander Ev-  
6 erly caused even more trouble for Plaintiff.

7 2.41 On the second day of the CJTC Academy, Assistant Commander Everly called  
8 Plaintiff into his office and chastised him for not having a jacket. A jacket was not required  
9 attire. Several other recruits did not have jackets, but none of them were chastised.

10 2.42 Midway through the program, Plaintiff received a call from Chief Culp. Chief Culp  
11 told Plaintiff that Assistant Commander Everly had called him and informed him that Plain-  
12 tiff did not follow CJTC Academy rules. As an example of this alleged misconduct, Assis-  
13 tant Commander Everly told Chief Culp that Plaintiff parked in the front row at the CTJC  
14 BLEA, which was against the rules. Other recruits frequently parked in the front row of  
15 the CTJC BLEA during the course of the CJTC Academy. On information and belief,  
16 Assistant Commander Everly did not call their supervisors and complain that those recruits  
17 did not follow CJTC Academy rules.

18 2.43 During firearms training one day, Plaintiff returned his duty ammunition to the  
19 classroom as he had been instructed. Assistant Commander Everly and Officer Dollard  
20 both accused Plaintiff of returning to retrieve forgotten equipment. Plaintiff had not forgot-  
21 ten any equipment in the classroom. No other recruits were accused of forgetting equip-  
22 ment or lying about trips back to the classroom.

23 2.44 Soon after Plaintiff's pepper spray certification, Assistant Commander Everly con-  
24 tacted Chief Culp again to complain about Plaintiff.

25 2.45 This pattern of discriminatory conduct culminated in Plaintiff being dismissed from  
26 the program by Assistant Commander Everly on the thinnest of pretexts.

27 2.46 During the second or third week of the Academy, Plaintiff had noticed that another  
28 recruit's wife stayed with her husband at the hotel where CJTC housed the recruits.

29 2.47 The next day, Plaintiff visited the office of TAC Officer David Daddatto ("Officer  
30 Daddatto") and asked whether he could also have guests stay with him overnight at the  
31 hotel. Officer Daddatto told Plaintiff that short-term guests were permitted if the guests

VERIFIED COMPLAINT FOR DAMAGES - 8

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1 followed all rules and Plaintiff's roommate consented. Officer Daddatto did not say any-  
 2 thing about guests being allowed only on certain days.

3 2.48 Plaintiff's roommate, Jordan Ulrich ("Recruit Ulrich"), was standing directly outside  
 4 the door to Officer Daddatto's office during that exchange. Plaintiff exited Officer Dad-  
 5 datto's office and immediately asked Recruit Ulrich whether he minded if Plaintiff had oc-  
 6 casional overnight guests. Recruit Ulrich said that it was okay with him.

7 2.49 For the rest of Plaintiff's stay, Plaintiff's minor daughter, visited Plaintiff overnight  
 8 every other weekend and some weekdays. Plaintiff's long-term girlfriend also sometimes  
 9 stayed overnight on weekdays.

10 2.50 Many other recruits at the CJTC BLEA had wives, girlfriends, and family members  
 11 stay with them overnight at the hotel during the course of the CJTC Academy, on week-  
 12 ends and weekdays.

13 2.51 Many recruits in previous classes at the CJTC BLEA had wives, girlfriends, and  
 14 family members stay with them overnight at the hotel during the course of the CJTC Acad-  
 15 emy, on weekends and weekdays.

16 2.52 On May 26, 2017, Plaintiff was removed from training and escorted into a room  
 17 with Commander Bowen and Assistant Commander Everly. The men questioned Plaintiff  
 18 about his daughter's overnight stays at the hotel during the CJTC Academy.

19 2.53 Plaintiff asked for an advocate or representative. Commander Bowen and Assis-  
 20 tant Commander Everly misinformed him that he was not entitled to one and did not give  
 21 him an opportunity to retain one.

22 2.54 CJTC did not contact Chief Culp or anyone else at the Republic PD before inves-  
 23 tigating Plaintiff.

24 2.55 Plaintiff answered the questions truthfully and accurately.

25 2.56 Commander Bowen and Assistant Commander Everly asked Plaintiff about his  
 26 conversation with Officer Daddatto about overnight guests during the second or third week  
 27 of the CJTC Academy. Plaintiff relayed his recollection of the conversation. He reported  
 28 that Officer Daddatto told him that short-term overnight guests were permitted if the guests  
 29 followed all rules and the recruit's roommate consented. Plaintiff added that Officer Dad-  
 30 datto had not distinguished between guests on the weekends and guests during the week  
 31 when he described the guest policy to Plaintiff.

VERIFIED COMPLAINT FOR DAMAGES - 9

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1 2.57 Separately, Assistant Commander Everly asked Officer Daddatto about his con-  
 2 versation with Plaintiff about overnight guests. Officer Daddatto did not recall the conver-  
 3 sation. Officer Daddatto said that he had told other recruits that guests were only permit-  
 4 ted on weekends. He did not recall saying this to Plaintiff.

5 2.58 Assistant Commander Everly also interviewed Recruit Ulrich about Plaintiff's con-  
 6 versation with Officer Daddatto about overnight guests. Recruit Ulrich said that Plaintiff  
 7 had asked his permission to have overnight guests immediately after Plaintiff's conversa-  
 8 tion with Officer Daddatto. Recruit Ulrich said that Plaintiff had not distinguished between  
 9 weekend guests and guests during the week when he asked Recruit Ulrich's permission  
 10 to have overnight guests.

11 2.59 On the basis of these interviews, Assistant Commander Everly purportedly con-  
 12 cluded that Plaintiff had lied in his account of his conversation with Officer Daddatto.

13 2.60 On May 30, 2017, just three (3) weeks before graduation, Plaintiff was dismissed  
 14 from the CJTC BLEA in Spokane for an alleged violation of the Academy's integrity policy,  
 15 namely, that Plaintiff was found to be untruthful in his account of his conversation with  
 16 Officer Daddatto about when guests could stay in the hotel overnight. Plaintiff was advised  
 17 to collect his things and report to Chief Culp.

18 2.61 Assistant Commander Everly told Chief Culp that the alleged integrity violation de-  
 19 scribed herein was the sole reason Plaintiff was dismissed from the CJTC BLEA. Everly  
 20 did not find that Plaintiff had violated any other policy or rule.

21 2.62 Assistant Commander Everly never explained what he was investigating Plaintiff  
 22 for in the first place, given that having overnight guests on weekdays was not considered  
 23 a violation of any policy or rule.

24 2.63 Assistant Commander Everly never conducted an investigation of Plaintiff's sup-  
 25 posed violation of the integrity policy.

26 2.64 Among other things, Assistant Commander Everly never sought additional evi-  
 27 dence as to whether Officer Daddatto usually told other recruits that guests were permitted  
 28 only on weekends.

29 2.65 On information and belief, Assistant Commander Everly told the entire class that  
 30 Plaintiff was dismissed for integrity issues.

31 2.66 On May 31, 2017, Elbert Koontz, the mayor of Republic ("Mayor Koontz"), put

VERIFIED COMPLAINT FOR DAMAGES - 10

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1 Plaintiff on unpaid administrative leave.

2 2.67 Also on May 31, 2017, Plaintiff met with Chief Culp and Mayor Koontz and gave  
3 them the dismissal document from the CJTC BLEA. Plaintiff also turned in all weapons  
4 and equipment. Chief Culp initiated an investigation into Plaintiff's dismissal because  
5 Chief Culp thought it was unfair that Plaintiff had been deemed untruthful based on Plain-  
6 tiff's account of his conversation with Officer Daddatto, which Officer Daddatto did not  
7 even remember.

8 2.68 On that same day, Chief Culp asked Assistant Commander Everly by email  
9 whether anyone from Ferry County had contacted Assistant Commander Everly or his  
10 staff about Plaintiff. Assistant Commander Everly refused to answer and referred Chief  
11 Culp's question to Commander Bowen. Assistant Commander Everly told Chief Culp that  
12 none of the other recruits liked Plaintiff.

13 2.69 Commander Bowen flatly refused to answer Chief Culp's question about whether  
14 persons from Ferry County had contacted staff and instructors about Plaintiff.

15 2.70 Other recruits at the CJTC Academy described Plaintiff to Chief Culp as a great  
16 officer, a great partner, very knowledgeable, and worthy of their respect. They praised his  
17 strong moral character, leadership, professionalism, and dedication.

18 2.71 On June 6, 2017, with Sheriff Maycumber's permission, Chief Culp privately inter-  
19 viewed Deputy Hershaw. During the interview, Deputy Hershaw revealed that he attended  
20 the CJTC BLEA in Spokane as a recruit and that his instructors were Assistant Com-  
21 mander Everly and Officer Dollard. Deputy Hershaw told Chief Culp that he had visited  
22 the CJTC BLEA in Spokane in late January 2017 for the purpose of picking up firearms  
23 targets. He admitted that he had spoken with Assistant Commander Everly and Officer  
24 Dollard during the visit. Deputy Hershaw then spent several minutes telling Chief Culp  
25 how much he hated Plaintiff.

26 2.72 Following his interview with Deputy Hershaw, Chief Culp strongly suspected that  
27 Deputy Hershaw talked to Assistant Commander Everly and Officer Dollard about Plaintiff  
28 making sexual misconduct allegations against Deputy Hershaw during Deputy Hershaw's  
29 visit to the CJTC BLEA in Spokane in late January 2017, and asked them to treat Plaintiff  
30 harshly.

31 2.73 On June 8, 2017, Chief Culp formally appealed Plaintiff's dismissal from the CJTC

VERIFIED COMPLAINT FOR DAMAGES - 11

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1 BLEA in Spokane in a letter to Executive Director Rahr.

2 2.74 On June 9, 2017, Plaintiff was returned to limited duty with full pay and benefits.  
3 Plaintiff was prohibited from patrolling or responding to calls. This is known as "desk duty"  
4 among police officers.

5 2.75 On June 10, 2017, Deputy Hershaw sent a text message to Plaintiff requesting a  
6 meeting. During the meeting, Deputy Hershaw asked Plaintiff to tell Chief Culp to stop his  
7 investigation. Deputy Hershaw expressed concern that he, Deputy Hershaw, was being  
8 investigated by Chief Culp in connection with Plaintiff's mistreatment at the CJTC Acad-  
9 emy. Deputy Hershaw repeatedly asked Plaintiff to make the investigation go away be-  
10 cause he was leaving town and did not want his family to know about the substance of the  
11 investigation.

12 2.76 On June 23, 2017, Executive Director Rahr communicated her decision to uphold  
13 the expulsion of Plaintiff from the CJTC BLEA in Spokane.

14 2.77 Chief Culp had already told Mayor Koontz that Plaintiff had a reserve certification  
15 and could be retained by the Republic PD even without completing the Academy.

16 2.78 Nevertheless, Mayor Koontz immediately terminated Plaintiff for failing to complete  
17 officer training.

18 2.79 Sometime in September 2017, Plaintiff applied for a counseling position at North-  
19 east Washington Alliance Counseling Services ("New Alliance"), a diagnostic and treat-  
20 ment center providing mental healthcare and chemical dependency treatment services in  
21 Republic. At the time of Plaintiff's application, Ronald L. Casebeer ("Mr. Casebeer"), the  
22 Ferry County Supervisor and Designated Mental Health Professional, was responsible for  
23 hiring decisions at New Alliance.

24 2.80 Shortly after Plaintiff applied, Sheriff Maycumber contacted Mr. Casebeer and told  
25 him not to hire Plaintiff. Sheriff Maycumber told Mr. Casebeer that hiring Plaintiff would  
26 be a mistake and that if Plaintiff was hired, he would not be allowed to do crisis services  
27 at the Ferry County Sheriff's Office. Sheriff Maycumber made negative comments about  
28 Plaintiff's integrity and character to Mr. Casebeer.

29 2.81 Mr. Casebeer contacted John Moser of Ferry County Human Resources and  
30 asked him about Plaintiff and Sheriff Maycumber's warning. Mr. Moser supported Plaintiff  
31 and advised Mr. Casebeer to ignore the warning.

VERIFIED COMPLAINT FOR DAMAGES - 12

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2.82 On October 2, 2017, Plaintiff was hired by New Alliance as a counselor. He agreed to a six-month probationary period.

2.83 Over the course of the next six (6) months, Plaintiff did his job very well. He received uniformly positive monthly reviews from supervisor Christine Lynch ("Ms. Lynch"), a licensed professional counselor at New Alliance. Plaintiff was never disciplined and never received negative feedback about his job performance.

2.84 In March 2018, Lynn Gulkey ("Ms. Gulkey"), Director of New Alliance, told Plaintiff that rumors were circulating about him in Ferry County. She did not identify the substance of the rumors. Ms. Gulkey cryptically added that every time she tried to look into the rumors she ran up against brick walls.

2.85 March 30, 2018 was Plaintiff's 180th day at New Alliance.

2.86 On April 2, 2018, Ms. Lynch gave Plaintiff a very positive six-month review.

2.87 On April 3, 2018, four (4) days after his probation ended, Ms. Gulkey abruptly terminated Plaintiff. Ms. Gulkey told Plaintiff that he was not being retained after his probationary period because he was "not going to be a good fit."

2.88 Ms. Gulkey did not follow termination procedures appropriate for a non-probationary employee when she terminated Plaintiff.

2.89 In a subsequent conversation with Plaintiff, Ms. Lynch denied knowledge of why Plaintiff was fired. Ms. Lynch told Plaintiff that she, and not Ms. Gulkey, should have been the one to decide whether to hire him permanently but instead his termination "came from above." Ms. Lynch advised Plaintiff to leave Ferry County because he had enemies in the local government.

2.90 Over the course of the next several days, Plaintiff suffered an anxiety attack due to being targeted by Defendants in Ferry County.

2.91 Later during April 2018, Plaintiff discovered that Deputy Rooker and Sheriff Maycumber had told local school districts and parents that Plaintiff was not allowed to be around children. Plaintiff began receiving phone calls, texts and emails from members of the public asking him about his contact with children. Plaintiff discovered public Facebook posts calling him a liar.

### III. FIRST CAUSE OF ACTION

#### Wrongful Termination in Violation of Public Policy

VERIFIED COMPLAINT FOR DAMAGES - 13

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**(Whistleblowing)**

3.1 Plaintiff re-alleges each and every allegation as set forth above.

3.2 Washington State has a clear public policy of encouraging local government employees to disclose improper governmental actions of local government officials and employees, as articulated in RCW 42.41.010.

3.3 Plaintiff engaged in protected whistleblowing activity in January 2017 when he reported Deputy Hershaw's sexual misconduct to Detective Rainer.

3.4 Discouraging the reporting of a deputy sheriff's sexual misconduct would jeopardize the policy articulated in Paragraph 3.2 *supra* by preventing the full disclosure of improper governmental actions of local government officials and employees.

3.5 Deputy Hershaw asked Assistant Commander Everly and Officer Dollard to single out Plaintiff for harsh treatment at the CJTC BLEA in Spokane as a direct result of — and in fact as revenge for — Plaintiff's protected whistleblowing activity against Deputy Hershaw. Plaintiff was targeted for hazing and disproportionate discipline by staff and instructors at the CJTC Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as a direct result of Deputy Hershaw's malicious request.

3.6 Detective Rainer also asked staff and instructors at the CJTC BLEA in Spokane to single out Plaintiff for harsh treatment as a direct result of — and in fact as revenge for — Plaintiff's protected whistleblowing activity against Deputy Hershaw. Plaintiff was targeted for hazing and disproportionate discipline by staff and instructors at the CJTC Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as a direct result of Detective Rainer's malicious request.

3.7 The targeted hazing and disproportionate discipline endured by Plaintiff culminated in an unsubstantiated determination by Assistant Commander Everly that Plaintiff had been untruthful during the internal investigation into Plaintiff's alleged misapplication of the CJTC BLEA's purported overnight guest policy. This unsubstantiated determination resulted in Plaintiff's wrongful dismissal from the CJTC BLEA in Spokane and, a few weeks later, his wrongful termination by Mayor Koontz.

3.8 The targeted hazing and disproportionate discipline endured by Plaintiff at the CJTC BLEA in Spokane, and his wrongful dismissal therefrom, violated the respective prohibitions against retaliation and intimidation of whistleblowers in RCW 42.41.040 and

VERIFIED COMPLAINT FOR DAMAGES - 14

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1 RCW 42.41.045. In so doing, they also violated the policy articulated in Paragraph 3.2  
2 *supra*.

3 3.9 The wrongful termination of Plaintiff from the Republic PD violated the prohibition  
4 against retaliation against whistleblowers in RCW 42.41.040. In so doing, it also violated  
5 the policy articulated in Paragraph 3.2 *supra*.

6 3.10 Assistant Commander Everly gave no other justification for Plaintiff's dismissal  
7 from the CJTC BLEA. His unsubstantiated determination of untruthfulness was the sole  
8 reason cited for Plaintiff's dismissal.

9 3.11 Mayor Koontz gave no other justification for Plaintiff's termination from the Repub-  
10 lic PD. Plaintiff's failure to complete officer training at the CJTC BLEA, which resulted  
11 from Assistant Commander Everly's unsubstantiated determination of untruthfulness, was  
12 the sole reason cited for Plaintiff's termination.

13 3.12 As a direct and proximate result of this retaliation, Plaintiff suffered damages in an  
14 amount to be proven at the time of trial.

15 **IV. SECOND CAUSE OF ACTION**  
16 **Wrongful Discharge in Violation of Public Policy**  
17 **(Common Law)**

18 4.1 Plaintiff re-alleges each and every allegation as set forth above.

19 4.2 Washington State has a clear common law public policy of encouraging local gov-  
20 ernment employees to disclose improper governmental actions of local government offi-  
21 cials and employees.

22 4.3 Plaintiff disclosed the improper governmental actions of a local government em-  
23 ployee in January 2017 when he reported Deputy Hershaw's sexual misconduct to Detec-  
24 tive Rainer.

25 4.4 Discouraging the reporting of a deputy sheriff's sexual misconduct would jeopard-  
26 ize the policy articulated in Paragraph 4.2 *supra* by preventing the full disclosure of im-  
27 proper governmental actions of local government officials and employees.

28 4.5 Deputy Hershaw asked Assistant Commander Everly and Officer Dollard to single  
29 out Plaintiff for harsh treatment at the CJTC BLEA in Spokane as a direct result of — and  
30 in fact as revenge for — Plaintiff's report of Deputy Hershaw's misconduct. Plaintiff was  
31 targeted for hazing and disproportionate discipline by staff and instructors at the CJTC

VERIFIED COMPLAINT FOR DAMAGES - 15

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Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as a direct result of Deputy Hershaw's malicious request.

4.6 Detective Rainer also asked staff and instructors at the CJTC BLEA in Spokane to single out Plaintiff for harsh treatment as a direct result of — and in fact as revenge for — Plaintiff's report of Deputy Hershaw's misconduct. Plaintiff was targeted for hazing and disproportionate discipline by staff and instructors at the CJTC Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as a direct result of Detective Rainer's malicious request.

4.7 The targeted hazing and disproportionate discipline endured by Plaintiff ultimately led to an unsubstantiated determination by Assistant Commander Everly that Plaintiff had been untruthful during the internal investigation into Plaintiff's alleged misapplication of the CJTC BLEA's purported overnight guest policy. This unsubstantiated determination resulted in Plaintiff's wrongful dismissal from the CJTC BLEA in Spokane and, a few weeks later, his wrongful termination by Mayor Koontz.

4.8 The targeted hazing and disproportionate discipline endured by Plaintiff at the CJTC BLEA in Spokane, and his wrongful dismissal therefrom, violated the public policy articulated in Paragraph 4.2 *supra*.

4.9 The wrongful termination of Plaintiff from the Republic PD violated the public policy articulated in Paragraph 4.2 *supra*.

4.10 Assistant Commander Everly gave no other justification for Plaintiff's dismissal from the CJTC BLEA. His unsubstantiated determination of untruthfulness was the sole reason cited for Plaintiff's dismissal.

4.11 Mayor Koontz gave no other justification for Plaintiff's termination from the Republic PD. Plaintiff's failure to complete officer training at the CJTC BLEA, which resulted from Assistant Commander Everly's unsubstantiated determination of untruthfulness, was the sole reason cited for Plaintiff's termination.

4.12 As a direct and proximate result of this wrongful termination, Plaintiff suffered damages in an amount to be proven at the time of trial.

## V. THIRD CAUSE OF ACTION

### Violation of the Washington Law Against Discrimination (Whistleblowing)

VERIFIED COMPLAINT FOR DAMAGES - 16

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1 5.1 Plaintiff re-alleges each and every allegation as set forth above.

2 5.2 The Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, prohib-  
3 its a government agency or government manager or supervisor from retaliating against a  
4 whistleblower, as defined in Chapter 42.40 RCW.

5 5.3 RCW 42.40.020(10)(a) defines "whistleblower" as "[a]n employee who in good faith  
6 reports alleged improper governmental action to the auditor or other public official, as de-  
7 fined in subsection (7) of this section."

8 5.4 RCW 42.40.020(7) defines "public official" to include "the director, or equivalent  
9 thereof in the agency where the employee works" and "individuals designated to receive  
10 whistleblower reports by the head of each agency."

11 5.5 Plaintiff engaged in protected whistleblowing activity in January 2017 when he re-  
12 ported Deputy Hershaw's sexual misconduct to Detective Rainer. He met the definition of  
13 whistleblower under RCW 42.40.020(10)(a) and 42.40.020(7) because he in good faith  
14 reported alleged improper governmental action to Detective Rainer, Deputy Hershaw's  
15 superior and the proper person to receive whistleblower reports.

16 5.6 Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belltz and  
17 other staff and instructors at the CJTC BLEA retaliated against Plaintiff for whistleblowing  
18 against Deputy Hershaw by singling him out for harsh treatment and disproportionate dis-  
19 cipline at the CJTC Academy. They did so at the request of Deputy Hershaw and Detec-  
20 tive Rainer, both of whom wanted revenge against Plaintiff for reporting Deputy Hershaw's  
21 sexual misconduct.

22 5.7 Commander Bowen and Assistant Commander Everly retaliated against Plaintiff  
23 for whistleblowing against Deputy Hershaw by dismissing Plaintiff from the CJTC BLEA  
24 on the basis of an unsubstantiated determination that he was untruthful during the internal  
25 investigation of his understanding of the CJTC BLEA overnight guest policy. The investi-  
26 gation and unsupported determination of untruthfulness were the direct result of Deputy  
27 Hershaw's and Detective Rainer's requests that Plaintiff be singled out for harsh treatment  
28 as payback for his whistleblowing activity.

29 5.8 Mayor Koontz retaliated against Plaintiff for whistleblowing against Deputy Her-  
30 shaw by terminating Plaintiff from the Republic PD on the basis of his failure to complete  
31 officer training at the CJTC BLEA in Spokane. Plaintiff failed to complete officer training

VERIFIED COMPLAINT FOR DAMAGES - 17

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1 at the CJTC Academy solely because of the retaliation described in Paragraphs 5.6 and  
2 5.7 herein.

3 5.9 Sheriff Maycumber retaliated against Plaintiff for whistleblowing against Deputy  
4 Hershaw by contacting Mr. Casebeer, speaking negatively about Plaintiff's integrity and  
5 character, warning Mr. Casebeer not to hire Plaintiff and threatening to limit Plaintiff's abil-  
6 ity to perform crisis counseling at the Ferry County Sheriff's Office.

7 5.10 Deputy Rooker and Sheriff Maycumber retaliated against Plaintiff for whistleblow-  
8 ing against Deputy Hershaw by telling local school districts and parents that Plaintiff was  
9 not allowed to be around children.

10 5.11 An unknown Ferry County official retaliated against Plaintiff for whistleblowing  
11 against Deputy Hershaw by spreading rumors about Plaintiff to Ms. Guiky.

12 5.12 Another Ferry County official retaliated against Plaintiff for whistleblowing against  
13 Deputy Hershaw by contacting Chief Kershane, criticizing Plaintiff's integrity and job per-  
14 formance as a police officer and warning Chief Kershane not to hire Plaintiff.

15 5.13 As a direct and proximate result of these numerous instances of retaliation, Plaintiff  
16 suffered damages in an amount to be proven at trial.

## 17 VI. FOURTH CAUSE OF ACTION

### 18 Violation of Substantive Due Process, 42 U.S.C. § 1983

19 6.1 Plaintiff re-alleges each and every allegation as set forth above.

20 6.2 Plaintiff had a property interest in continued enrollment as a recruit at the CJTC  
21 BLEA in Spokane. He was not on probation and he had performed all requirements from  
22 the date of his enrollment until his wrongful dismissal from the CJTC Academy on May 30,  
23 2017. He was just a few weeks away from graduating.

24 6.3 Commander Bowen and Assistant Commander Everly abridged Plaintiff's property  
25 interest described in Paragraph 6.2 by dismissing Plaintiff because of an unsubstantiated  
26 finding that he had been untruthful during an internal investigation. The investigation and  
27 unsubstantiated finding were, in turn, motivated by Deputy Hershaw's and Detective  
28 Rainer's requests that Assistant Commander Everly, Officer Dollard and other staff and  
29 instructors at the CJTC Academy in Spokane single out Plaintiff for harsh treatment and  
30 disproportionate discipline.

31 6.4 Commander Bowen and Assistant Commander Everly's dismissal of Plaintiff was

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1 arbitrary and unreasonable. Assistant Commander Everly determined that Plaintiff had  
 2 been untruthful based on Plaintiff's recall of a conversation about the CJTC Academy's  
 3 overnight guest policy that took place four (4) months prior to the date on which Assistant  
 4 Commander Everly questioned Plaintiff about it. Officer Daddatto, the other party to the  
 5 conversation, could not recall the conversation at all by that time. It was not reasonable  
 6 for Assistant Commander Everly and Commander Bowen to conclude that Plaintiff had  
 7 been untruthful and deserved to be dismissed.

8 6.5 Executive Director Rahr abridged the property interest described Paragraph 67.2  
 9 by upholding Plaintiff's unjustified dismissal. Her decision to support his dismissal was  
 10 arbitrary and unreasonable in light of the lack of substantial evidence that Plaintiff had  
 11 been untruthful, as described above.

12 6.6 Plaintiff had a property interest in continued employment as a police officer with  
 13 the Republic PD. He was not on probation and served in good standing from September  
 14 1, 2016 until his wrongful dismissal from the CJTC BLEA in Spokane on May 30, 2017.

15 6.7 Mayor Koontz abridged Plaintiff's property interest described in Paragraph 6.6 by  
 16 terminating Plaintiff as the result of his unjustified dismissal from the CJTC BLEA in Spo-  
 17 kane.

18 6.8 Mayor Koontz's termination of Plaintiff on these unsupported grounds was arbitrary  
 19 and unreasonable. Mayor Koontz did not examine the merits of Plaintiff's dismissal from  
 20 the CJTC BLEA, nor did he make an independent determination of whether Plaintiff had  
 21 been dismissed for reasons that would merit termination from the Republic PD. Mayor  
 22 Koontz simply took the CJTC BLEA staff at its word and rubber-stamped Plaintiff's termi-  
 23 nation.

24 6.9 Plaintiff had a liberty interest in the preservation of his good name and reputation.

25 6.10 Deputy Hershaw and Detective Rainer abridged the Plaintiff's liberty interest de-  
 26 scribed in Paragraph 6.9 by telling staff and instructors at the CJTC BLEA in Spokane,  
 27 including but not limited to Assistant Commander Everly and Officer Dollard, that Plaintiff  
 28 was a liar because Plaintiff reported Deputy Hershaw's sexual misconduct to Detective  
 29 Rainer.

30 6.11 As a result of Deputy Hershaw's and Detective Rainer's communications, Plaintiff  
 31 was wrongfully dismissed from the CJTC BLEA in Spokane and wrongfully terminated

VERIFIED COMPLAINT FOR DAMAGES - 19

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1 from his job at the Republic PD.

2 6.12 Deputy Hershaw's and Detective Rainer's communications are imputed to their  
3 employer, Ferry County, because they made them while acting in the course of their em-  
4 ployment.

5 6.13 Deputy Rooker and Sheriff Maycumber abridged the liberty interest described in  
6 Paragraph 6.9 by telling local school districts and parents that Plaintiff was not allowed to  
7 be around children.

8 6.14 As a result of Deputy Rooker and Sheriff Maycumber's communications, Plaintiff  
9 suffered reputational harm in the community.

10 6.15 Unknown Ferry County officials abridged Plaintiff's liberty interest described in Par-  
11 agraph 6.9 by spreading rumors about Plaintiff to Ms. Gulkey.

12 6.16 As a result of these unknown Ferry County officials' communications, Plaintiff was  
13 terminated from his employment at New Alliance by Ms. Gulkey.

14 6.17 As a direct and proximate result of all of the above-described violations of Plaintiff's  
15 substantive due process rights, Plaintiff suffered damages in an amount to be proven at  
16 trial.

## 17 VII. FIFTH CAUSE OF ACTION

### 18 Violation of Procedural Due Process, 42 U.S.C. § 1983

19 7.1 Plaintiff re-alleges each and every allegation as set forth above.

20 7.2 Plaintiff had a property interest in continued enrollment as a recruit at the CJTC  
21 BLEA in Spokane. He was not on probation and he had performed all requirements from  
22 the date of his enrollment until his wrongful dismissal from the CJTC Academy on May 30,  
23 2017.

24 7.3 Plaintiff has a liberty interest in the preservation of his good name and reputation.

25 7.4 Commander Bowen and Assistant Commander Everly abridged Plaintiff's property  
26 and liberty interests described Paragraphs 7.2 and 7.3 by dismissing Plaintiff without ad-  
27 equate process. Commander Bowen and Assistant Commander Everly made their deci-  
28 sion to dismiss Plaintiff based solely on Assistant Commander Everly's determination that  
29 Plaintiff had been untruthful during an internal investigation into misconduct. This deter-  
30 mination was based on Plaintiff's recollection of a conversation with Officer Daddatto  
31 about the CJTC Academy's overnight guest policy. Officer Daddatto could not recall the

VERIFIED COMPLAINT FOR DAMAGES - 20

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1 conversation at all. The investigation took less than one (1) week. Plaintiff was not af-  
 2 fforded the opportunity to question the witnesses interviewed by Assistant Commander  
 3 Everly or to offer any other witness testimony besides his own to support his truthfulness.

4 7.5 The process that resulted in Plaintiff's dismissal from the CJTC BLEA was consti-  
 5 tutionally inadequate and fundamentally unfair. Plaintiff was not afforded the opportunity  
 6 to give a full defense of his integrity; instead, he was abruptly and unfairly dismissed.

7 7.6 Executive Director Rahr abridged Plaintiff's property and liberty interests described  
 8 in Paragraphs 7.2 and 7.3, *supra*, by upholding Plaintiff's wrongful dismissal from the  
 9 CJTC BLEA without adequate process. She did not give Plaintiff the opportunity to speak  
 10 in his defense or offer witnesses or evidence to rebut Assistant Commander Everly's un-  
 11 substantiated finding of untruthfulness. She did not give Plaintiff the opportunity to present  
 12 evidence that Deputy Hershaw and/or Detective Rainer had contacted Assistant Com-  
 13 mander Everly and asked him to single Plaintiff out for harsh treatment and disproportion-  
 14 ate discipline, or that Assistant Commander Everly was biased against Plaintiff as a result  
 15 of his prior relationship with Deputy Hershaw.

16 7.7 The process that resulted in Executive Director Rahr's upholding of Plaintiff's un-  
 17 justified dismissal from the CJTC BLEA in Spokane was constitutionally inadequate and  
 18 fundamentally unfair. Plaintiff was not afforded the opportunity to give a full defense of his  
 19 integrity; instead, his unjustified dismissal was summarily upheld.

20 7.8 Plaintiff had a property interest in continued employment as a police officer with  
 21 the Republic PD. He was not on probation and served in good standing from September  
 22 1, 2016 until his wrongful dismissal from the CJTC BLEA in Spokane on May 30, 2017.

23 7.9 Mayor Koontz abridged the property and liberty interests described Paragraphs  
 24 7.8 and 7.3 by terminating Plaintiff without adequate process. Mayor Koontz did not give  
 25 Plaintiff the opportunity to speak in his defense or offer witnesses or evidence to rebut the  
 26 unsubstantiated finding of untruthfulness that caused his dismissal from the CJTC Acad-  
 27 emy and resulted in his termination. Nor did he afford Plaintiff the opportunity to present  
 28 evidence that Deputy Hershaw and Detective Rainer had contacted staff and instructors  
 29 at the CJTC BLEA in Spokane and asked them to single him out for harsh treatment and  
 30 disproportionate discipline. Mayor Koontz did not examine the merits of Plaintiff's dismis-  
 31 sal from the CJTC BLEA or the potential bias against Plaintiff stemming from Deputy

VERIFIED COMPLAINT FOR DAMAGES - 21

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Hershaw's and Detective Rainer's communications with staff and instructors, nor did he make an independent determination of whether Plaintiff had been dismissed for reasons that would merit termination from the Republic PD. Mayor Koontz simply took the CJTC BLEA staff at its word and rubber-stamped Plaintiff's termination

7.10 The process that resulted in Plaintiff's termination was constitutionally inadequate and unfair. Plaintiff was not afforded the opportunity to give a full defense of his conduct at the CJTC Academy and instead was summarily fired.

7.11 As a direct and proximate result of these violations of Plaintiff's procedural due process rights, Plaintiff suffered damages in an amount to be proven at trial, including but not limited to the loss of his good name and reputation.

## VIII. SIXTH CAUSE OF ACTION

### Infliction of Emotional Distress

8.1 Plaintiff re-alleges each and every allegation as set forth above.

8.2 The targeted hazing and disproportionate discipline suffered by Plaintiff at the CJTC BLEA in Spokane inflicted significant emotional distress on Plaintiff. The systematic mistreatment caused him to suffer severe humiliation, stress and anxiety. The actions of the staff and instructors at the CJTC Academy were extreme—no decent law enforcement officers would subject a recruit to this type of abuse, and indeed no other recruits at the CJTC Academy were singled out for such ill-treatment.

8.3 Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Beltz and other staff and instructors at the CJTC BLEA intended their actions to cause Plaintiff emotional distress, their goal being to make Plaintiff's experience at the CJTC BLEA a living hell as payback for his protected whistleblowing activity against Deputy Hershaw.

8.4 The unsupported determination of untruthfulness made by Assistant Commander Everly, Plaintiff's dismissal from the CJTC BLEA in Spokane and Plaintiff's ensuing termination by Mayor Koontz exacerbated the emotional distress caused by the targeted hazing and disproportionate discipline that Plaintiff endured during the CJTC Academy. So too did the actions taken by Sheriff Maycumber and other unknown Ferry County officials to undermine his employment prospects and reputation in the community. The cumulative stress and anxiety resulting from this series of events caused Plaintiff to suffer an anxiety attack, for which he sought and received medical treatment.

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8.5 In the alternative, the aforesaid Defendants engaged in the conduct described in Paragraphs 8.2, 8.3 and 8.4 with reckless or negligent disregard to the emotional distress it would cause Plaintiff. It was foreseeable that the systematic hazing and disproportionate discipline of Plaintiff at the CJTC BLEA, the unsubstantiated determination that he had been untruthful, his dismissal from the CJTC Academy, his termination from the Republic PD, and Sheriff Maycumber's and other unknown Ferry County officials' interference with his future employment and community reputation would cause Plaintiff severe emotional distress. Defendants deliberately disregarded this probability when they acted.

8.6 Plaintiff's reaction to Defendants' actions was reasonable given the circumstances. The ruination of Plaintiff's law enforcement career and his future prospects both in Ferry County and further afield as a result of Defendants' actions against him was understandably extremely distressing.

8.7 As a direct and proximate result of the emotional distress described herein, Plaintiff suffered damages in an amount to be proven at trial.

## IX. SEVENTH CAUSE OF ACTION

### Intentional Interference with Business Relationship

9.1 Plaintiff re-alleges each and every allegation as set forth above.

9.2 Plaintiff had a valid contractual relationship with the CJTC BLEA and a valid business expectancy in his graduation from the CJTC Academy upon completion of the required coursework.

9.3 Deputy Hershaw and Detective Rainer knew that Plaintiff was properly enrolled in the CJTC BLEA and knew that, like all recruits, Plaintiff had a valid business expectancy in graduation upon completion of the required coursework.

9.4 Deputy Hershaw and Detective Rainer intentionally interfered with Plaintiff's enrollment in the CJTC Academy by requesting that CJTC BLEA staff and instructors, including Assistant Commander Everly and Officer Dollard, target Plaintiff for hazing, harsh treatment and disproportionate discipline, with the intent of making Plaintiff's experience at the CJTC Academy a living hell and causing him to drop out or suffer dismissal prior to his graduation.

9.5 Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Bellitz and other staff and instructors at the CJTC BLEA in Spokane did target him

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1 for hazing, harsh treatment and disproportionate discipline, with the intent of making Plain-  
 2 tiff's experience at the CJTC Academy a living hell and causing him to drop out or suffer  
 3 dismissal prior to his graduation.

4 9.6 The actions described in Paragraphs 9.4 and 9.5 resulted in Plaintiff's dismissal  
 5 from the CJTC BLEA prior to graduation; Plaintiff did not graduate.

6 9.7 The actions described in Paragraph 9.4 are imputed to Deputy Hershaw's em-  
 7 ployer, Ferry County, because he made the request while acting in the course of his em-  
 8 ployment, namely, while picking up targets from the CJTC BLEA following firearms train-  
 9 ing.

10 9.8 The actions described in Paragraph 9.4 are imputed to Detective Rainer's em-  
 11 ployer, Ferry County, because he made the request while acting in the course of his em-  
 12 ployment.

13 9.9 imputedAs a direct and proximate result of this intentional interference with Plain-  
 14 tiff's enrollment in the CJTC BLEA in Spokane, Plaintiff suffered damages in an amount  
 15 to be proven at trial.

16 9.10 Plaintiff had a valid contractual relationship with the Republic PD and a valid busi-  
 17 ness expectancy in his continued employment.

18 9.11 Deputy Hershaw and Detective Rainer knew that Plaintiff had a valid contractual  
 19 relationship with the Republic PD and a valid business expectancy in his continued em-  
 20 ployment. Republic is a very small town. The Republic PD and the Ferry County Sheriff's  
 21 Office work in close proximity to each other and employees are familiar with the terms and  
 22 conditions of employment of officers, deputies and staff working for both agencies.

23 9.12 Deputy Hershaw and Detective Rainer intentionally interfered with Plaintiff's con-  
 24 tractual relationship with and continued employment by the Republic PD by contacting  
 25 staff and instructors at the CJTC BLEA, including Assistant Commander Everly and Officer  
 26 Dollard, and asking them to target Plaintiff for harsh treatment and disproportionate disci-  
 27 pline at the CJTC Academy. Deputy Hershaw and Detective Rainer made this request in  
 28 order to disrupt Plaintiff's experience at the CJTC Academy and thwart his graduation,  
 29 which Deputy Hershaw and Detective Rainer knew would result in the termination of Plain-  
 30 tiff's employment.

31 9.13 This interference was for an improper purpose and/or by improper means.

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1 9.14 Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Jensen,  
 2 Officer Belitz, other staff and instructors at the CJTC BLEA in Spokane knew that Plaintiff  
 3 had a valid contractual relationship with the Republic PD and a valid business expectancy  
 4 in his continued employment, and knew that graduation from the CJTC BLEA was a con-  
 5 dition of his continued employment.

6 9.15 Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Jensen,  
 7 Officer Belitz and other staff and instructors at the CJTC BLEA in Spokane interfered with  
 8 Plaintiff's contractual relationship with the Republic PD and his valid business expectancy  
 9 in continued employment by targeting him for hazing, harsh treatment and disproportion-  
 10 ate discipline, with the intent of making Plaintiff's experience at the CJTC Academy a living  
 11 hell and causing him to drop out or suffer dismissal prior to his graduation.

12 9.16 This interference was for an improper purpose and/or by improper means.

13 9.17 The actions described in Paragraph 9.5 are imputed to the CJTC and Spokane  
 14 because Commander Bowen, Assistant Commander Everly, Officer Dollard, Officer Belitz,  
 15 Officer Jensen and the other staff and instructors at the CJTC BLEA in Spokane were  
 16 acting in the course of their employment with these entities by conducting the CJTC BLEA  
 17 in Spokane at the time the actions took place.

18 9.18 The actions described in Paragraph 9.12 and 9.15 resulted in the termination of  
 19 Plaintiff's employment with the Republic PD by Mayor Koontz.

20 9.19 Deputy Hershaw's misconduct is imputed to his employer, Ferry County, because  
 21 he made the communication while acting in the course of his employment, namely, while  
 22 picking up targets from the CJTC BLEA following firearms training.

23 9.20 Detective Rainer's misconduct is imputed to his employer, Ferry County, because  
 24 he made the communication while acting in the course of his employment.

25 9.21 As a direct and proximate result of this intentional interference with Plaintiff's em-  
 26 ployment at the Republic PD, Plaintiff was terminated and suffered damages in an amount  
 27 to be proven at trial.

28 9.22 Plaintiff had a valid contractual relationship with New Alliance and a valid business  
 29 expectancy in his continued employment following the expiration of his six-month proba-  
 30 tionary period.

31 9.23 Sheriff Maycumber, Deputy Rooker, Ms. Burke and other unknown Ferry County

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officials knew that Plaintiff had a valid contractual relationship with New Alliance and a valid business expectancy in his continued employment following the expiration of his six-month probationary period.

9.24 Sheriff Maycumber intentionally interfered with Plaintiff's contractual relationship with New Alliance and with Plaintiff's business expectancy in his continued employment by contacting Mr. Casebeer, criticizing Plaintiff's integrity and character and telling Mr. Casebeer not to hire Plaintiff, that it would be a mistake to hire Plaintiff and that if Plaintiff was hired, he would not be allowed to do crisis services at the Ferry County Sheriff's Office.

9.25 This interference was for an improper purpose and/or by improper means.

9.26 Sheriff Maycumber and Deputy Rooker intentionally interfered with Plaintiff's contractual relationship with New Alliance and with Plaintiff's business expectancy in his continued employment by telling local school districts and parents that Plaintiff was not allowed to be around children.

9.27 This interference was for an improper purpose and/or by improper means.

9.28 Other unknown Ferry County Officials intentionally interfered with Plaintiff's contractual relationship with New Alliance and with Plaintiff's business expectancy in his continued employment by spreading rumors about Plaintiff to Ms. Gulkey.

9.29 This interference was for an improper purpose and/or by improper means.

9.30 The actions described in Paragraphs 9.24, 9.26, 9.26 and 9.28 resulted in the termination of Plaintiff's employment at New Alliance by Ms. Gulkey after the expiration of Plaintiff's six-month probationary period.

9.31 As a direct and proximate result of this intentional interference with Plaintiff's employment at New Alliance, Plaintiff suffered damages in an amount to be proven at trial.

## **X. EIGHTH CAUSE OF ACTION**

### **Defamation**

10.1 Plaintiff re-alleges each and every allegation as set forth above.

10.2 Plaintiff is not a public figure.

10.3 Deputy Hershaw and Detective Rainer told staff and instructors at the CJTC BLEA in Spokane, including but not limited to Assistant Commander Every and Officer Dollard, damaging and untrue facts about Plaintiff including but not limited to that Plaintiff was a

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1 liar because Plaintiff reported Deputy Hershaw's sexual misconduct to Detective Rainer.

2 10.4 The communications described in Paragraph 10.3 were not privileged.

3 10.5 The communications described in Paragraph 10.3 were false. Plaintiff truthfully  
4 reported what he knew about Deputy Hershaw's sexual misconduct.

5 10.6 Deputy Hershaw knew that Plaintiff was not a liar because Deputy Hershaw did  
6 engage in the sexual misconduct reported to Detective Rainer. He acted with actual mal-  
7 ice toward Plaintiff, intending to get revenge for Plaintiff's report.

8 10.7 Detective Rainer knew that Plaintiff was not a liar, or at least Detective Rainer  
9 acted with reckless indifference to the truth, because, on information and belief, Deputy  
10 Hershaw privately told him that he did engage in the sexual misconduct reported by Plain-  
11 tiff. Detective Rainer acted with actual malice toward Plaintiff, intending to get revenge for  
12 Plaintiff's report about his friend.

13 10.8 As a result of the communications described in Paragraph 10.3, Plaintiff was tar-  
14 geted for hazing and disproportionate discipline at the CJTC BLEA, dismissed because of  
15 an unsubstantiated determination by Assistant Commander Everly that Plaintiff had been  
16 untruthful during an internal investigation and, as a result of said dismissal, terminated  
17 from his position at the Republic PD.

18 10.9 Deputy Hershaw's and Detective Rainer's defamatory communications are im-  
19 puted to their employer, Ferry County, because they made them while acting in the course  
20 of their employment. Specifically, Deputy Hershaw communicated with Assistant Com-  
21 mander Everly and Officer Dollard while picking up targets from the CJTC BLEA following  
22 firearms training.

23 10.10 As a direct and proximate result of Deputy Hershaw's and Detective Rainer's def-  
24 amation, Plaintiff suffered damages in an amount to be proven at trial.

25 10.11 Sheriff Maycumber and Deputy Rooker told local school districts and parents that  
26 Plaintiff was not allowed to be around children.

27 10.12 The communications described in Paragraph 10.11 were not privileged; they were  
28 made to members of the public.

29 10.13 The communications described in Paragraph 10.11 were false. Plaintiff has never  
30 been barred from being around children.

31 10.14 Sheriff Maycumber and Deputy Rooker knew that the communications described

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1 in Paragraph 10.11 were false. They made the communications with actual malice, in-  
 2 tending to damage Plaintiff's reputation in the community.

3 10.15 As a direct and proximate result of Sheriff Maycumber and Deputy Rooker's defa-  
 4 mation, Plaintiff suffered damages in an amount to be proven at trial.

5 10.16 Unknown Ferry County officials spread rumors about Plaintiff to Ms. Gulkey.

6 10.17 On information and belief, the communications described in Paragraph 10.16 were  
 7 not privileged.

8 10.18 On information and belief, the communications described in Paragraph 10.16 were  
 9 false and the unknown Ferry County officials who made them knew of their falsity.

10 10.19 On information and belief, the communications described in Paragraph 10.16 are  
 11 imputed to Ferry County because they were made in the course of the unknown Ferry  
 12 County officials' employment, namely, during the work day while they were acting in their  
 13 capacity as employees and/or elected officials of Ferry County.

14 10.20 As a direct and proximate result of the unknown Ferry County officials' defamation,  
 15 Plaintiff was terminated from his employment at New Alliance by Ms. Gulkey and suffered  
 16 damages in an amount to be proven at trial.

## 17 **XI. NINTH CAUSE OF ACTION**

### 18 **Violation of the Washington Law Against Discrimination**

#### 19 **(Racial Discrimination)**

20 11.1 Plaintiff re-alleges each and every allegation as set forth above.

21 11.2 The WLAD prohibits an employer from discharging or discriminating against a per-  
 22 son in the terms and conditions of employment because of race, and all persons from  
 23 aiding, abetting, encouraging or inciting such practices. These prohibitions are found in  
 24 RCW 49.60.180 and RCW 49.60.220.

25 11.3 Deputy Hershaw and Detective Rainer asked Assistant Commander Everly and  
 26 Officer Dollard, along with other staff and instructors at the CJTC Academy in Spokane,  
 27 to single out Plaintiff for harsh treatment there because of Plaintiff's race. Plaintiff was  
 28 targeted for hazing and disproportionate discipline by staff and instructors at the CJTC  
 29 Academy, including but not limited to Assistant Commander Everly and Officer Dollard, as  
 30 a direct result of Deputy Hershaw's and Detective Rainer's racially-motivated request.

31 11.4 Assistant Commander Everly and Officer Dollard, along with other staff and

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1 instructors at the CJTC Academy in Spokane, knowingly or negligently aided and abetted  
 2 Deputy Hershaw and Detective Rainer's racially discriminatory motivation.

3 11.5 The targeted hazing and disproportionate discipline endured by Plaintiff culmi-  
 4 nated in an unsubstantiated determination by Assistant Commander Everly that Plaintiff  
 5 had been untruthful during the internal investigation into Plaintiff's alleged misapplication  
 6 of the BLEA's purported overnight guest policy. This unsubstantiated determination re-  
 7 sulted in Plaintiff's wrongful dismissal from the CJTC BLEA in Spokane and, a few weeks  
 8 later, his wrongful termination by Mayor Koontz.

9 11.6 The actions of Commander Bowen, Assistant Commander Everly, Officer Dollard,  
 10 Officer Belltz, Officer Jensen and other staff and instructors at the CJTC BLEA in Spokane  
 11 are imputed to their employers, the CJTC and the Spokane PD, because they were un-  
 12 dertaken in the course of their employment while conducting the CJTC Academy and be-  
 13 cause those employees had authority and responsibility to stop the discriminatory conduct.

14 11.7 Deputy Hershaw's and Detective Rainer's communications with Assistant Com-  
 15 mander Everly, Officer Dollard and other staff and instructors at the CJTC Academy in  
 16 Spokane violated the prohibition against encouraging or inciting racially discriminatory ac-  
 17 tions contained in RCW 49.60.220.

18 11.8 The actions of Deputy Hershaw and Detective Rainer are imputed to their em-  
 19 ployer, Ferry County, because they were undertaken in the course of their employment —  
 20 with respect to Deputy Hershaw, while he was picking up targets from the CJTC BLEA in  
 21 Spokane after firearms training.

22 11.9 The targeted hazing and disproportionate discipline endured by Plaintiff at the  
 23 CJTC BLEA in Spokane, and his wrongful dismissal therefrom, violated the prohibition  
 24 against racially-motivated discrimination and racially-motivated discharge contained in RCW  
 25 49.60.180(2) and RCW 49.60.180(3).

26 11.10 The wrongful termination of Plaintiff from the Republic PD by Mayor Koontz vio-  
 27 lated the prohibition against racially-motivated discharge contained in RCW 49.60.180(2).

28 11.11 Mayor Koontz knowingly or negligently aided and abetted the racially discrimina-  
 29 tory conduct and intent of Deputy Hershaw and Detective Rainer.

30 11.12 Mayor Koontz's fault is imputed to the City because it was in the course of his  
 31 employment and because he had the authority and responsibility to prevent racially

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discriminatory conduct.

11.13 As a direct and proximate result of this race-based discrimination, Plaintiff suffered damages in an amount to be proven at the time of trial.

## XII. TENTH CAUSE OF ACTION

### Violation of the Washington Law Against Discrimination (Racial Discrimination)

12.1 Plaintiff re-alleges each and every allegation as set forth above.

12.2 The WLAD prohibits an employer from discriminating against a person in the terms and conditions of employment because of race. See RCW 49.60.180.

12.3 Deputy Hershaw, Deputy Ventura and Detective Rainer made racial jokes and derogatory, racist comments to Plaintiff during his employment, making fun of Plaintiff's race and non-white skin color. Detective Rainer also engaged in racist conduct directed toward Plaintiff by making Plaintiff business cards that included a Mexican sombrero emoji and a large mustache.

12.4 This offensive conduct was severe and pervasive. Defendants made racial jokes and derogatory, racist comments in Plaintiff's hearing on a daily basis at work. A reasonable person would consider this racist conduct intimidating, hostile and/or abusive.

12.5 The actions of Deputy Hershaw, Deputy Ventura and Detective Rainer are imputed to their employers, Ferry County, because they were undertaken in the course of their employment.

12.6 The actions of Deputy Hershaw, Deputy Ventura and Detective Rainer violated the prohibition against racially-motivated discrimination contained in RCW 49.60.180(3).

12.7 As a direct and proximate result of this race-based discrimination and the hostile work environment that it created, Plaintiff suffered damages in an amount to be proven at the time of trial.

## PRAYER FOR RELIEF

PLAINTIFF requests the following relief:

1. A finding that Deputy Hershaw and Detective Rainer violated the prohibition against retaliation against whistleblowers contained in RCW 42.41.040;

2. A finding that Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz and other staff and instructors at the CJTC BLEA in Spokane violated the

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1 prohibitions against retaliation against and intimidation of whistleblowers contained in  
2 RCW 42.41.040 and RCW 42.41.045, respectively;

3 3. A finding that Commander Bowen, Assistant Commander Everly and Ex-  
4 ecutive Director Rahr wrongfully dismissed Plaintiff from the CJTC BLEA in Spokane in  
5 violation of public policy under state and federal statute and common law;

6 4. A finding that Mayor Koontz wrongfully terminated Plaintiff from the Repub-  
7 lic PD in violation of public policy under state and federal statute and common law;

8 5. A finding that Sheriff Maycumber, Mayor Koontz, Deputy Hershaw, Detec-  
9 tive Rainer, Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Bellitz  
10 and other staff and instructors at the CJTC BLEA in Spokane retaliated against Plaintiff  
11 because of his protected whistleblowing activity in violation of the WLAD;

12 6. A finding that Commander Bowen, Assistant Commander Everly, Execu-  
13 tive Director Rahr and Mayor Koontz violated Plaintiff's substantive due process rights;

14 7. A finding that Commander Bowen, Assistant Commander Everly, Execu-  
15 tive Director Rahr and Mayor Koontz violated Plaintiff's procedural due process rights;

16 8. A finding that Sheriff Maycumber, Mayor Koontz, Deputy Rooker, Deputy  
17 Hershaw, Detective Rainer, Assistant Commander Everly, Officer Dollard, Officer Jensen,  
18 Officer Bellitz, other staff and instructors at the CJTC BLEA in Spokane and other Ferry  
19 County officials intentionally, recklessly and/or negligently inflicted emotional distress on  
20 Plaintiff;

21 9. A finding that Deputy Hershaw, Detective Rainer, Commander Bowen, As-  
22 sistant Commander Everly, Officer Dollard, Officer Jensen, Officer Bellitz and other staff  
23 and instructors at the CJTC BLEA in Spokane intentionally interfered with Plaintiff's en-  
24 rollment at the CJTC Academy in Spokane and with his valid business expectancy in grad-  
25 uation therefrom;

26 10. A finding that Deputy Hershaw and Detective Rainer intentionally interfered  
27 with Plaintiff's employment relationship with the Republic PD and with his valid business  
28 expectancy in continued employment;

29 11. A finding that Sheriff Maycumber, Deputy Rooker and other Ferry County  
30 officials intentionally interfered with Plaintiff's employment relationship with New Alliance  
31 and with his valid business expectancy in continued employment;

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12. A finding that Deputy Hershaw, Detective Rainer, Sheriff Maycumber, Deputy Rooker and other Ferry County officials defamed Plaintiff;

13. A finding that Deputy Hershaw, Detective Rainer, Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz, Commander Bowen and Mayor Koontz discriminated against, dismissed and discharged Plaintiff because of his race in violation of the WLAD;

14. A finding that the actions of Deputy Hershaw, Detective Rainer, Sheriff Maycumber, Deputy Rooker and other Ferry County officials are imputed to their employer, Ferry County.

15. A finding that the actions of Assistant Commander Everly, Officer Dollard, Officer Jensen, Officer Belitz and other staff and instructors at the CJTC Academy in Spokane who are police officers at the Spokane PD are imputed to their employer, Spokane;

16. A finding that the actions of Commander Bowen and Executive Director Rahr are imputed to their employer, the CJTC;

17. A finding that the actions of Mayor Koontz are imputed to his employer, Republic.

18. An award of damages, including, but not limited to, the following:

18.1 Past and future wages and benefits of employment, including but not limited to a reduction of Social Security benefits, the loss of state law enforcement retirement benefits, lost paid vacation, sick leave, deferred compensation, holidays and longevity pay;

18.2 Loss of career, future advancement, and earning potential;

18.3 Tax consequences of an award of past or future wages;

18.4 Special and general damages associated with finding comparable replacement employment;

18.5 Special and general damages to mental and physical health;

18.6 General damages for embarrassment, humiliation, pain, suffering and damage to reputation;

18.7 All other general and special damages as may be proven;

18.8 Attorney's fees and costs of suit, including but not limited to those available to Plaintiff under RCW 49.48.030, RCW 49.60.030(2) and

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42 U.S.C. § 1983.

19. Injunctive relief barring all Defendants from further defaming Plaintiff;

20. An award of such other relief as the Court may believe to be just and equitable under the circumstances.

**DATED** this 10th day of April 2020,

**FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC**

/s/ Allison R. Foreman  
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VERIFICATION

I, John J. Cruz, am the Plaintiff in the above entitled action. I have read the contents of the foregoing Verified Complaint and I believe the same to be true to the best of my knowledge and belief.

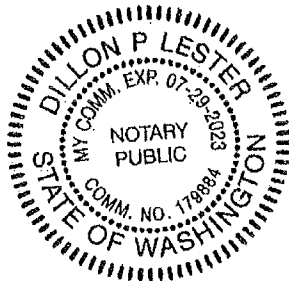



JOHN J. CRUZ

STATE OF WASHINGTON )  
 ) ss.  
 County of Chelan )

I certify that I know or have satisfactory evidence that John J. Cruz is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 10<sup>th</sup> day of April, 2020.

(Print Name): Dillon P. Lester  
 NOTARY PUBLIC, State of Washington  
 My appointment expires: 07/29/2023

VERIFIED COMPLAINT FOR DAMAGES - 34

FOREMAN, HOTCHKISS, BAUSCHER, & ZIMMERMAN, PLLC  
 124 N. WENATCHEE AVE., STE. A  
 WENATCHEE, WASHINGTON 98801  
 (509) 662-9602 / FAX (509) 662-9606

# Exhibit G

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

JOHN J. CRUZ,

NO. 20-2-07720-8 SEA

Plaintiffs,

NOTICE OF APPEARANCE

v.

FERRY COUNTY; the CITY OF REPUBLIC, a  
municipal corporation; the CITY OF SPOKANE,  
a municipal corporation; the WASHINGTON  
STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, a state commission; RAY  
MAYCUMBER, Ferry County Sheriff; AMY  
ROOKER, Ferry County Chief Civil Deputy;  
AUSTIN HERSHAW, a Police Office at the  
Black Diamond Police Department; Patrick  
RAINER, Detective at the Ferry County  
Sheriff's Office; RICK BOWEN, Commander of  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JOHN EVERLY, Police Officer at the Spokane  
Police Department and Assistant Commander  
of the Washington State Criminal Justice  
Training Commission Basic Law Enforcement  
Academy; ART DOLLARD, Police Officer at  
the Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
JAKE JENSON, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training

\\PROLAWSVR\\lawdata\\Documents\\Republic v City of Republic (CIAW)\\Pleadings - Initial\\585182.doc

NOTICE OF APPEARANCE OF COUNSEL  
Page -- 1



P.O. Box 130 | 124 3<sup>rd</sup> AVE S.W.  
Ephrata, WA 98823  
(509) 754-2356 | Fax (509) 754-4202

Commission Basic Law Enforcement Academy;  
TODD BELITZ, Police Officer at the Spokane  
Police Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement Academy;  
and SUE RAHR, Executive Director of the  
Washington State Criminal Justice Training  
Commission,

Defendants.

TO: King County Superior Court  
516 3rd Ave, Rm E-609  
Seattle, Washington 98104-2363

AND TO: Allison R. Foreman  
Foreman, Hotchkiss, Bauscher, & Zimmerman, PLLC  
P.O. Box 3125  
Wenatchee, WA 98807

AND TO: Nathan J. Arnold  
Coutier Arnold Jacobowitz, PLLC  
2701 First Avenue, Suite 200  
Seattle, WA 98121

AND TO: Michael E. McFarland, Jr.  
Evans, Craven & Lackie, P.S.  
818 W. Riverside, Suite 250  
Spokane, WA 99201

TO THE CLERK AND COUNSEL YOU ARE NOTIFIED THAT Jerry J. Moberg, of  
Moberg Rathbone Kearns, P.S., herewith enters this appearance in the above-entitled action as  
attorney of record for Defendant CITY OF REPUBLIC, a municipal corporation, request that all  
further pleadings herein, exclusive of process, be served upon said attorneys at their office  
address stated below.

Moberg Rathbone Kearns, P.S.  
124 3<sup>rd</sup> Ave S.W. / P.O. Box 130  
Ephrata, WA 98823  
Ph. (509) 754-2356 / Fax (509) 754-4202

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NOTICE OF APPEARANCE OF COUNSEL  
Page -- 2





P.O. Box 130 | 124 3<sup>rd</sup> AVE S.W.  
Ephrata, WA 98823  
(509) 754-2356 | Fax (509) 754-4202

1 Defendant City of Republic hereby specifically reserves all defenses as to lack of  
2 jurisdiction, improper venue, insufficiency of process or any other defenses available to the  
3 Defendant.

4 DATED May 5, 2020

5 MOBERG RATHBONE KEARNS, P.S.


6  WSBA No. 59035  
7  
8  JERRY J. MOBERG, WSBA #5282  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I certify that on this date, I sent for delivery a true and correct copy of the document to which is affixed by the method indicated below and addressed to the following:

<p>Allison R. Foreman Foreman, Hotchkiss, Bauscher, &amp; Zimmerman, PLLC P.O. Box 3125 Wenatchee, WA 98807 <a href="mailto:Allison@fzbzl.com">Allison@fzbzl.com</a></p>	<table border="1"> <tr><td><input type="checkbox"/></td><td>U.S. MAIL</td></tr> <tr><td><input type="checkbox"/></td><td>PROCESS LEGAL SERVER</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>EMAIL ONLY</td></tr> <tr><td><input type="checkbox"/></td><td>HAND DELIVERED</td></tr> <tr><td><input type="checkbox"/></td><td>EXPRESS DELIVERY</td></tr> <tr><td><input type="checkbox"/></td><td>FACSIMILE</td></tr> </table>	<input type="checkbox"/>	U.S. MAIL	<input type="checkbox"/>	PROCESS LEGAL SERVER	<input checked="" type="checkbox"/>	EMAIL ONLY	<input type="checkbox"/>	HAND DELIVERED	<input type="checkbox"/>	EXPRESS DELIVERY	<input type="checkbox"/>	FACSIMILE
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<input type="checkbox"/>	HAND DELIVERED												
<input type="checkbox"/>	EXPRESS DELIVERY												
<input type="checkbox"/>	FACSIMILE												
<p>Nathan J. Arnold Coutier Arnold Jacobowitz, PLLC 2701 First Avenue, Suite 200 Seattle, WA 98121 <a href="mailto:Nathan@CAJlawyers.com">Nathan@CAJlawyers.com</a></p>	<table border="1"> <tr><td><input type="checkbox"/></td><td>U.S. MAIL</td></tr> <tr><td><input type="checkbox"/></td><td>PROCESS LEGAL SERVER</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>EMAIL ONLY</td></tr> <tr><td><input type="checkbox"/></td><td>HAND DELIVERED</td></tr> <tr><td><input type="checkbox"/></td><td>EXPRESS DELIVERY</td></tr> <tr><td><input type="checkbox"/></td><td>FACSIMILE</td></tr> </table>	<input type="checkbox"/>	U.S. MAIL	<input type="checkbox"/>	PROCESS LEGAL SERVER	<input checked="" type="checkbox"/>	EMAIL ONLY	<input type="checkbox"/>	HAND DELIVERED	<input type="checkbox"/>	EXPRESS DELIVERY	<input type="checkbox"/>	FACSIMILE
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<input checked="" type="checkbox"/>	EMAIL ONLY												
<input type="checkbox"/>	HAND DELIVERED												
<input type="checkbox"/>	EXPRESS DELIVERY												
<input type="checkbox"/>	FACSIMILE												
<p>Michael E. McFarland Jr. Evans, Craven &amp; Lackie, PS West 818 Riverside Avenue Suite 250 Spokane, WA 99201 <a href="mailto:mmcfarland@ecl-law.com">mmcfarland@ecl-law.com</a> <a href="mailto:kmauss@ecl-law.com">kmauss@ecl-law.com</a></p>	<table border="1"> <tr><td><input type="checkbox"/></td><td>U.S. MAIL</td></tr> <tr><td><input type="checkbox"/></td><td>PROCESS LEGAL SERVER</td></tr> <tr><td><input checked="" type="checkbox"/></td><td>EMAIL ONLY</td></tr> <tr><td><input type="checkbox"/></td><td>HAND DELIVERED</td></tr> <tr><td><input type="checkbox"/></td><td>EXPRESS DELIVERY</td></tr> <tr><td><input type="checkbox"/></td><td>FACSIMILE</td></tr> </table>	<input type="checkbox"/>	U.S. MAIL	<input type="checkbox"/>	PROCESS LEGAL SERVER	<input checked="" type="checkbox"/>	EMAIL ONLY	<input type="checkbox"/>	HAND DELIVERED	<input type="checkbox"/>	EXPRESS DELIVERY	<input type="checkbox"/>	FACSIMILE
<input type="checkbox"/>	U.S. MAIL												
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<input checked="" type="checkbox"/>	EMAIL ONLY												
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<input type="checkbox"/>	EXPRESS DELIVERY												
<input type="checkbox"/>	FACSIMILE												

DATED May 5, 2020 at Ephrata, WA.

  
Susannah Rittenhouse

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NOTICE OF APPEARANCE OF COUNSEL  
Page -- 4



MOBERG  
RATHBONE  
KEARNS  
P.O. Box 130 | 124 3rd AVE S.W.  
Ephrata, WA 98823  
(509) 754-2356 | Fax (509) 754-4202

MICHAEL E. McFARLAND, JR., #23000  
 Evans, Craven & Lackie, P.S.  
 818 W. Riverside, Suite 250  
 Spokane, WA 99201-0910  
 (509) 455-5200; fax (509) 455-3632  
 Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF WASHINGTON

JOHN J. CRUZ,

Plaintiff,

vs.

US District Court for Western District of  
 Washington Case No. 2:20-cv-00729

FERRY COUNTY; the CITY OF  
 REPUBLIC, a municipal corporation; the  
 CITY OF SPOKANE, a municipal  
 corporation; the WASHINGTON STATE  
 CRIMINAL JUSTICE TRAINING  
 COMMISSION, a state commission; RAY  
 MAYCUMBER, Ferry County Sheriff; AMY  
 ROOKER, Ferry County Chief Civil Deputy;  
 AUSTIN HERSHAW, Police Officer at the  
 Black Diamond Police Department;  
 PATRICK RAINER, Detective at the Ferry  
 County Sheriff's Office; RICK BOWEN,  
 Commander of the Washington State  
 Criminal Justice Training Commission Basic  
 Law Enforcement Academy; JOHN  
 EVERLY, Police Officer at the Spokane  
 Police Department and Assistant Commander  
 of the Washington State Criminal Justice  
 Training Commission Basic Law  
 Enforcement Academy; ART DOLLARD,  
 Police Officer at the Spokane Police  
 Department and TAC Officer at the  
 Washington State Criminal Justice Training  
 Commission Basic Law Enforcement  
 Academy; JAKE JENSEN, Police Officer at  
 the Spokane Police Department and TAC  
 Officer at the Washington State Criminal  
 Justice Training Commission Basic Law

King County Superior Court Cause No. 20-2-  
 07720-8 SEA

NOTICE OF REMOVAL OF ACTION

NOTICE OF REMOVAL OF ACTION - page 1

*Evans, Craven & Lackie, P.S.*  
 818 W. Riverside, Suite 250  
 Spokane, WA 99201-0910  
 (509) 455-5200; fax (509) 455-3632

1 Enforcement Academy; TODD BELITZ,  
2 Police Officer at the Spokane Police  
3 Department and TAC Officer at the  
4 Washington State Criminal Justice Training  
5 Commission Basic Law Enforcement  
6 Academy; and SUE RAHR, Executive  
7 Director of the Washington State Criminal  
8 Justice Training Commission,

Defendants.

TO: The Clerk of the Court

**PLEASE TAKE NOTICE** that Defendants Ferry County, Ray Maycumber, Amy Rooker, Patrick Rainer, and Austin Hershaw (“Removing Defendants”) hereby remove to this Court the state court action described below.

**1. State Court Action**

On May 1, 2020, Defendants Ferry County, Ray Maycumber, Amy Rooker and Patrick Rainer were served with the Summons and Complaint.<sup>1</sup> *See Certificate of Michael McFarland*, Ex. A-D. Austin Hershaw was served on May 13, 2020. *Id.*, Ex. E. Plaintiff’s Complaint was filed in King County Superior Court on April 10, 2020, and assigned cause number 20-2-07720-8 SEA.

**2. Federal Question Jurisdiction**

Plaintiff’s Complaint alleges that the Removing Defendants violated his rights under the U.S. Constitution. Specifically, Plaintiff alleges that his Fourteenth Amendment

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<sup>1</sup> Removing Defendants do not concede that service was properly effected on Ray Maycumber, Amy Rooker or Patrick Rainer and reserve improper service as a defense under Fed. R. Civ. P. 12(b).



substantive and procedural due process rights were violated. *Complaint*, Section VI-VII. Plaintiff has specifically asserted these causes of action under 42 U.S.C. § 1983. *Id.*

Accordingly, this action is removable to federal court under 28 U.S.C. § 1441, as Plaintiff's claims arise under the Constitution, laws or treaties of the United States, and this Court would have had original jurisdiction over Plaintiff's claims under 28 U.S.C. §§ 1331 and 1343 had Plaintiff elected to file the action in federal court. This Court is the District Court of the United States embracing the place where the state court action is currently pending, and is therefore the appropriate Court for removal pursuant to 28 U.S.C. § 1441(a).<sup>2</sup>

### 3. Timely Removal

Ferry County was served with the Summons and Complaint on May 1, 2020. This Notice of Removal is filed within 30 days after the service of the Complaint. *See* 28 U.S.C. § 1446(b). The Removing Defendants are unaware of any defendants having been served more than 20 days prior to this removal. Additionally, all Defendants have consented to this removal. *Certificate of Michael McFarland.*

### 4. Papers Served

Copies of all process and any pleading served upon Defendants are attached as **Exhibits A-G** to the Certificate of Attorney.

///

///

---

<sup>2</sup> Removing Defendants will be moving this Court pursuant to 28 U.S.C. § 1404(a), to transfer venue to the Eastern District of Washington, as venue in the Western District is improper under 28 U.S.C. § 1391(b).

1 DATED this 14th day of May, 2020.

2  
3 EVANS, CRAVEN & LACKIE, P.S.

4  
5 By: /s/ Michael E. McFarland  
6 MICHAEL E. McFARLAND, JR., #23000  
7 Attorneys for Ferry County Defendants  
8  
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30 NOTICE OF REMOVAL OF ACTION - page 4

*Evans, Craven & Lackie, P.S.*  
818 W. Riverside, Suite 250  
Spokane, WA 99201-0910  
(509) 455-5200; fax (509) 455-3632

**CERTIFICATE OF SERVICE**

I hereby certify that on May 14th, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

*No Electronic Recipients*

I hereby further certify that I have caused to be served a true and correct copy of the foregoing document(s) on the non-CM/ECF participants as indicated:

**Counsel for Plaintiff**

Allison R. Foreman	Via Regular Mail	[ ]
Foreman, Hotchkiss, Bauscher	Via Certified Mail	[ ]
& Zimmerman, PLLC	Via Overnight Mail	[ ]
124 N. Wenatchee Avenue, Suite A	Via Facsimile	[ ]
P.O. Box 3125	Hand Delivered	[ ]
Wenatchee, WA 98807	Via Email	[X]
Email: <a href="mailto:allison@fzbzlaw.com">allison@fzbzlaw.com</a>		

**Counsel for Plaintiff**

Nathan J. Arnold	Via Regular Mail	[ ]
Cloutier Arnold Jacobowitz, PLLC	Via Certified Mail	[ ]
2701 First Avenue, Suite 200	Via Overnight Mail	[ ]
Seattle, WA 98121	Via Facsimile	[ ]
Hand Delivered	[ ]	
Email: <a href="mailto:nathan@CAJlawyers.com">nathan@CAJlawyers.com</a>	Via Email	[X]

**Counsel for City of Republic**

Jerry Moberg		
Mary Rathbone	Via Regular Mail	[ ]
Moberg Rathbone Kearns	Via Certified Mail	[ ]
124 3 <sup>rd</sup> Avenue SW	Via Overnight Mail	[ ]
P.O. Box 130	Via Facsimile	[ ]
Ephrata, WA 98823	Hand Delivered	[ ]
Email: <a href="mailto:jmoberg@mrklawgroup.com">jmoberg@mrklawgroup.com</a>	Via Email	[X]
Email: <a href="mailto:mrathbone@mrklawgroup.com">mrathbone@mrklawgroup.com</a>		

s/ Michael E. McFarland, Jr.  
 MICHAEL E. McFARLAND, #23000  
 Attorney for Defendants  
 Evans, Craven & Lackie, P.S.

NOTICE OF REMOVAL OF ACTION - page 5

*Evans, Craven & Lackie, P.S.*  
 818 W. Riverside, Suite 250  
 Spokane, WA 99201-0910  
 (509) 455-5200; fax (509) 455-3632

818 W. Riverside Ave., Suite 250  
Spokane, Washington 99201  
(509) 455-5200  
(509) 455-3632 Facsimile  
[MMcFarland@ecl-law.com](mailto:MMcFarland@ecl-law.com)

NOTICE OF REMOVAL OF ACTION - page 6

*Evans, Craven & Lackie, P.S.*  
818 W. Riverside, Suite 250  
Spokane, WA 99201-0910  
(509) 455-5200; fax (509) 455-3632

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

JOHN J. CRUZ

(b) County of Residence of First Listed Plaintiff FERRY  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Foreman, Hotchkiss, Bauscher, & Zimmerman, PLLC  
124 N. Wenatchee Ave., Suite A  
Wenatchee, WA 98801 (509) 662-9602

## DEFENDANTS

FERRY COUNTY, ET AL.

County of Residence of First Listed Defendant FERRY  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Evans, Craven & Lackie, PS  
818 W. Riverside Ave., Suite 250  
Spokane, WA 99201 (509) 455-5200

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Recopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1441

Brief description of cause:  
Wrongful Discharge/Violation of 14th Amendment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

1-ER - 236

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

APPEAL,JURY,LC03

**Eastern District of Washington  
U.S. District Court (Spokane)  
CIVIL DOCKET FOR CASE #: 2:20-cv-00250-SAB**

Cruz v. Ferry County et al  
Assigned to: Chief Judge Stanley A Bastian  
Case in other court: 9CCA, 21-35912  
Washington Western, 2:20-cv-00729  
Cause: 28:1441 Petition for Removal- Civil Rights Act

Date Filed: 07/15/2020  
Jury Demand: Both  
Nature of Suit: 442 Civil Rights: Jobs  
Jurisdiction: Federal Question

**Plaintiff****John J Cruz**

represented by **Allison Rone Foreman**  
Foreman Hotchkiss Baucher and  
Zimmerman  
124 North Wenatchee Avenue  
Suite A  
Wenatchee, WA 98801  
509-662-9602  
Email: allison@fzbzl.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Nathan J Arnold**  
Arnold Jacobowitz PLLC  
2701 First Ave  
Suite 200  
Seattle, WA 98121  
206-799-4221  
Email: nathan@cajlawyers.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Emanuel F Jacobowitz**  
Cloutier Arnold Jacobowitz PLLC  
2701 First Avenue  
Suite 200  
Seattle, WA 98121  
206-866-3230  
Fax: 206-866-3234  
Email: manny@caoteam.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant****Ferry County**

represented by **Michael E McFarland , Jr**  
Evans Craven & Lackie PS - SPO

**1-ER - 237**

818 West Riverside  
Suite 250  
Spokane, WA 99201-0910  
509-455-5200  
Fax: 15094553632  
Email: mmcfarland@ecl-law.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**City of Republic**  
*a municipal corporation*

represented by **Jerry John Moberg**  
Moberg Rathbone Kearns PS  
238 W Division Ave  
PO Box 130  
Ephrata, WA 98823  
509-754-2356  
Fax: 509-754-4202  
Email: jmoberg@mrklawgroup.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Mary Moberg Rathbone**  
Moberg Rathbone Kearns PS  
PO Box 130  
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*LEAD ATTORNEY*  
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**Defendant**

**City of Spokane**  
*a municipal corporation*

represented by **Taylor M Hennessey**  
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1116 West Riverside Avenue  
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*TERMINATED: 01/24/2022*

**Defendant**

**Washington State Criminal Justice  
Training Commission**  
*a state commission*

represented by **Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Katherine A McNulty**  
(See above for address)  
*TERMINATED: 01/24/2022*

**Defendant**

**Ray Maycumber**  
*Ferry County Sheriff*

represented by **Michael E McFarland , Jr**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Amy Rooker**  
*Ferry County Chief Civil Deputy*

represented by **Michael E McFarland , Jr**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Austin Hershaw**  
*Police Officer at the Black Diamond Police  
Department*

represented by **Michael E McFarland , Jr**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Patrick Rainer**  
*Detective at the Ferry County Sheriff's  
Office*

represented by **Michael E McFarland , Jr**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Rick Bowen**  
*Commander of the Washington State  
Criminal Justice Training Commission  
Basic Law Enforcement Academy*

represented by **Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)



*ATTORNEY TO BE NOTICED*

**Katherine A McNulty**  
(See above for address)  
*TERMINATED: 01/24/2022*

**Defendant****John Everly**

*Police Officer at the Spokane Police  
Department and Assistant Commander of  
the Washington State Criminal Justice  
Training Commission Basic Law  
Enforcement Academy*

represented by **Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Katherine A McNulty**  
(See above for address)  
*TERMINATED: 01/24/2022*

**Defendant****Art Dollard**

*Police Officer at the Spokane Police  
Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement  
Academy*

represented by **Katherine A McNulty**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Defendant****Jake Jensen**

*Police Officer at the Spokane Police  
Department and TAC Officer at the  
Washington State Criminal Justice Training  
Commission Basic Law Enforcement  
Academy*

represented by **Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Katherine A McNulty**  
(See above for address)  
*TERMINATED: 01/24/2022*

**Defendant****Todd Belitz**

*Police Officer at the Spokane Police  
Department and TAC Officer at the*

represented by **Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*

*Washington State Criminal Justice Training  
Commission Basic Law Enforcement  
Academy*

*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Katherine A McNulty**  
(See above for address)  
*TERMINATED: 01/24/2022*

**Defendant**

**Sue Rahr**  
*Executive Director of the Washington State  
Criminal Justice Training Commission*

represented by **Taylor M Hennessey**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Carl Perry Warring**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Katherine A McNulty**  
(See above for address)  
*TERMINATED: 01/24/2022*

Date Filed	#	Docket Text
05/14/2020	<u>1</u>	NOTICE OF REMOVAL from King County Superior Court, case number 20-2-07720-8 SEA; (Receipt # AWAUDC-6336577), filed by Patrick Rainer, Ray Maycumber, Austin Hershaw, Amy Rooker, Ferry County. (Attachments: # <u>1</u> Civil Cover Sheet)(McFarland, Michael) (Additional attachment(s) added on 5/15/2020: # <u>2</u> Complaint) (CDA). [Transferred from Washington Western on 7/15/2020.] (Entered: 05/14/2020)
05/14/2020	<u>2</u>	CERTIFICATE re <u>1</u> Notice of Removal, by Defendants Ferry County, Austin Hershaw, Ray Maycumber, Patrick Rainer, Amy Rooker (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(McFarland, Michael) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/14/2020)
05/15/2020		Judge Marsha J. Pechman added. (CDA) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/15/2020)
05/15/2020	<u>3</u>	LETTER from Clerk re receipt of case from King County Superior Court and advising of WAWD case number and judge assignment. (CDA) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/15/2020)
05/20/2020	<u>4</u>	Joint MOTION to Change Venue filed by All Defendants. Noting Date 6/12/2020, (McFarland, Michael) Modified on 5/20/2020 to add text re filing parties(ELS). [Transferred from Washington Western on 7/15/2020.] (Entered: 05/20/2020)
05/20/2020	<u>5</u>	DECLARATION of Michael E. McFarland, Jr. filed by Defendants Todd Belitz, Rick Bowen, City of Republic, City of Spokane, Art Dollard, John Everly, Ferry County, Austin Hershaw, Jake Jensen, Ray Maycumber, Sue Rahr, Patrick Rainer, Amy Rooker, Washington State Criminal Justice Training Commission re <u>4</u> Joint MOTION to Change Venue (Attachments: # <u>1</u> Exhibit A)(McFarland, Michael) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/20/2020)

05/20/2020		NOTICE of Docket Text Modification re <u>4</u> Joint MOTION to Change Venue: edited text to reflect the the Motion was filed on behalf of all Defendants. (ELS) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/20/2020)
05/22/2020	<u>6</u>	DEMAND for JURY TRIAL by Plaintiff John J Cruz (Jacobowitz, Emanuel) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/22/2020)
05/28/2020	<u>7</u>	NOTICE of Appearance by attorney Carl P Warring on behalf of Defendants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. (Warring, Carl) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/28/2020)
05/28/2020	<u>8</u>	ANSWER to Complaint; with JURY DEMAND by Todd Belitz, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission, Rick Bowen .(Warring, Carl) Modified on 5/29/2020 (PS). [Transferred from Washington Western on 7/15/2020.] (Entered: 05/28/2020)
05/29/2020		NOTICE of Docket Text Modification re <u>8</u> Answer to Complaint : Amended docket text to additionally identify Rick Bowen as filing party/defendant, per counsel request. (PS) [Transferred from Washington Western on 7/15/2020.] (Entered: 05/29/2020)
06/08/2020	<u>9</u>	RESPONSE, by Plaintiff John J Cruz, to <u>4</u> Joint MOTION to Change Venue . (Attachments: # <u>1</u> Proposed Order)(Arnold, Nathan) [Transferred from Washington Western on 7/15/2020.] (Entered: 06/08/2020)
06/08/2020	<u>10</u>	DECLARATION of Nathan J. Arnold filed by Plaintiff John J Cruz re <u>4</u> Joint MOTION to Change Venue (Arnold, Nathan) [Transferred from Washington Western on 7/15/2020.] (Entered: 06/08/2020)
06/12/2020	<u>11</u>	REPLY, filed by Defendants Todd Belitz, Rick Bowen, City of Republic, City of Spokane, Art Dollard, John Everly, Ferry County, Austin Hershaw, Jake Jensen, Ray Maycumber, Sue Rahr, Patrick Rainer, Amy Rooker, Washington State Criminal Justice Training Commission, TO RESPONSE to <u>4</u> Joint MOTION to Change Venue (McFarland, Michael) [Transferred from Washington Western on 7/15/2020.] (Entered: 06/12/2020)
06/30/2020	<u>12</u>	ORDER granting Defendants' <u>4</u> Joint MOTION to Change Venue. The case shall therefore be transferred to the Eastern District of Washington. Signed by Judge Marsha J. Pechman  Per LCR 3(i) this case will be electronically transferred on 7/15/2020. (PM) [Transferred from Washington Western on 7/15/2020.] (Entered: 06/30/2020)
07/09/2020	<u>13</u>	ORDER (Amended) granting Defendants' <u>4</u> Joint MOTION to Change Venue. The case shall therefore be transferred to the Eastern District of Washington. Signed by Judge Marsha J. Pechman  Per LCR 3(i) this case will be electronically transferred on 7/15/2020. (PM) [Transferred from Washington Western on 7/15/2020.] (Entered: 07/09/2020)
07/15/2020	<u>14</u>	Case transferred in from District of Washington Western; Case Number 2:20-cv-00729. Docket sheet received. (Entered: 07/15/2020)
07/24/2020	<u>15</u>	NOTICE of Unavailability of Counsel by John J Cruz (Arnold, Nathan) (Entered: 07/24/2020)
08/07/2020	<u>16</u>	DEMAND for Trial by Jury by John J Cruz. (Arnold, Nathan) (Entered: 08/07/2020)
01/22/2021	<u>17</u>	ANSWER to Complaint with jury demand. by City of Republic.(Moberg, Jerry) (Entered: 01/22/2021)
03/29/2021	<u>18</u>	Joint Certificate Pursuant to Rule 26 / Rule 16 by Todd Belitz, Rick Bowen, City of

		Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. (Warring, Carl) (Entered: 03/29/2021)
03/30/2021	<u>19</u>	JURY TRIAL SCHEDULING ORDER: Status Conference set for <b>1/21/2022</b> at <b>09:30 AM</b> in Spokane Courtroom 901 via Video Conference. Pretrial Conference set for <b>5/3/2022</b> at <b>09:30 AM</b> in Spokane Courtroom 901 via Video Conference. Jury Trial set for <b>5/16/2022</b> at <b>09:00 AM</b> in Spokane Courtroom 901. Signed by Judge Rosanna Malouf Peterson. (LMR, Case Administrator) (Entered: 03/30/2021)
04/09/2021	<u>20</u>	NOTICE of Compliance With Scheduling Order by City of Republic (Moberg, Jerry) (Entered: 04/09/2021)
07/13/2021	<u>21</u>	MOTION for Partial Summary Judgment by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. Motion Hearing set for <b>9/3/2021</b> Without Oral Argument before Judge Rosanna Malouf Peterson. (Attachments: # <u>1</u> Text of Proposed Order)(Warring, Carl) (Entered: 07/13/2021)
07/13/2021	<u>22</u>	STATEMENT OF FACTS re <u>21</u> MOTION for Partial Summary Judgment filed by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. (Warring, Carl) (Entered: 07/13/2021)
07/15/2021	<u>23</u>	MOTION for Discovery <i>CR35 Mental Health Exam</i> by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. Motion Hearing set for <b>7/30/2021</b> Without Oral Argument before Judge Rosanna Malouf Peterson. (Attachments: # <u>1</u> Text of Proposed Order) (Warring, Carl) Modified on 7/15/2021 <b>See Amended Document</b> filed at ECF <u>25</u> . (AY, Case Administrator). Modified on 7/15/2021 to correct ECF No. (AY, Case Administrator). (Entered: 07/15/2021)
07/15/2021	<u>24</u>	MOTION to Expedite <i>Hearing on Motion for Discovery</i> by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. Motion Hearing set for <b>7/30/2021</b> Without Oral Argument before Judge Rosanna Malouf Peterson. (Attachments: # <u>1</u> Text of Proposed Order) (Warring, Carl) (Entered: 07/15/2021)
07/15/2021	<u>25</u>	AMENDED DOCUMENT filed by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission Re <u>23</u> MOTION for Discovery <i>CR35 Mental Health Exam</i> . Description: inadvertently left off exhibits. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Warring, Carl) (Entered: 07/15/2021)
07/16/2021	26	TEXT ORDER (no PDF will issue) <b>GRANTING</b> , for good cause shown, Defendants' Motion to Expedite the Hearing of Defendants' Motion for an Order Authorizing a Mental Examination of John J. Cruz Pursuant to Fed. R. Civ. P. 35, <b>ECF No. 24</b> . Plaintiff John J. Cruz shall file a response to Defendants' Motion for an Order Authorizing a Mental Examination of Plaintiff, ECF No. <u>25</u> , by <b>July 23, 2021</b> . The Defendants moving the Court shall file a reply, if any, to Plaintiff's response by <b>July 28, 2021</b> . Defendants' Motion for an Order Authorizing a Mental Examination of Plaintiff remains set for hearing on July 30, 2021, without oral argument. This text-only entry constitutes the Court's ruling on the matter. Signed by Judge Rosanna Malouf Peterson. (MS, Judicial Assistant) (Entered: 07/16/2021)
07/30/2021	<u>27</u>	ORDER GRANTING <u>23</u> DEFENDANT'S MOTION FOR FED. R. CIV. P. 35 MENTAL HEALTH EXAMINATION OF PLAINTIFF JOHN J. CRUZ. Signed by Judge Rosanna Malouf Peterson. (AY, Case Administrator) (Entered: 07/30/2021)

08/03/2021	<u>28</u>	NOTICE of Association of Counsel by Emanuel F Jacobowitz on behalf of John J Cruz (Attorney Emanuel F Jacobowitz added to party John J Cruz(pty:pla))(Jacobowitz, Emanuel) (Entered: 08/03/2021)
08/03/2021	<u>29</u>	RESPONSE to Motion re <u>21</u> MOTION for Partial Summary Judgment filed by John J Cruz. (Jacobowitz, Emanuel) (Entered: 08/03/2021)
08/03/2021	<u>30</u>	DECLARATION by Emanuel Jacobowitz in Opposition re <u>21</u> MOTION for Partial Summary Judgment filed by John J Cruz. (Attachments: # <u>1</u> Proposed Order)(Jacobowitz, Emanuel) (Entered: 08/03/2021)
08/03/2021	<u>31</u>	DECLARATION by John J. Cruz in Opposition re <u>21</u> MOTION for Partial Summary Judgment filed by John J Cruz. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Jacobowitz, Emanuel) (Entered: 08/03/2021)
08/17/2021	<u>32</u>	REPLY MEMORANDUM re <u>21</u> MOTION for Partial Summary Judgment filed by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. (Warring, Carl) (Entered: 08/17/2021)
10/08/2021	<u>33</u>	ORDER DENYING <u>21</u> DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT. Signed by Judge Rosanna Malouf Peterson. (LMR, Case Administrator) (Entered: 10/08/2021)
10/21/2021	<u>34</u>	ORDER REASSIGNING CASE. Case reassigned to Chief Judge Stanley A Bastian for all further proceedings. Judge Rosanna Malouf Peterson no longer assigned to case. Signed by Chief Judge Stanley A Bastian. TEXT ORDER ONLY. NO PDF ATTACHED.(RG, Chief Deputy) (Entered: 10/21/2021)
10/26/2021	<u>35</u>	TEXT-ONLY NOTICE (no PDF shall issue) The Court sets a Telephonic Scheduling Conference for <b>Tuesday, November 30, 2021 at 11:00 a.m.</b> before Chief Judge Stanley A. Bastian to discuss the schedule and deadlines previously set by Judge Rosanna Malouf Peterson. The parties shall call the Court's toll-free conference line at 1-888-636-3807 and enter access code: 8839796. Please listen carefully and follow the automated instructions so that you can be added to the conference in a timely manner. Hearing content provided via videoconference or teleconference dial-in access MUST NOT be recorded or rebroadcast.(MF, Courtroom Deputy) (Entered: 10/26/2021)
11/01/2021	<u>36</u>	NOTICE of Association of Counsel by Katherine A McNulty on behalf of Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission (Attorney Katherine A McNulty added to party Todd Belitz(pty:dft), Attorney Katherine A McNulty added to party Rick Bowen(pty:dft), Attorney Katherine A McNulty added to party City of Spokane(pty:dft), Attorney Katherine A McNulty added to party Art Dollard(pty:dft), Attorney Katherine A McNulty added to party John Everly(pty:dft), Attorney Katherine A McNulty added to party Jake Jensen(pty:dft), Attorney Katherine A McNulty added to party Sue Rahr(pty:dft), Attorney Katherine A McNulty added to party Washington State Criminal Justice Training Commission(pty:dft))(McNulty, Katherine) (Entered: 11/01/2021)
11/01/2021	<u>37</u>	LODGED NOTICE OF APPEAL from District Court decision as to <u>33</u> Order on Motion for Partial Summary Judgment by Rick Bowen, Sue Rahr, John Everly, City of Spokane, Washington State Criminal Justice Training Commission, Jake Jensen, Todd Belitz, Art Dollard. Filing fee \$ 505, receipt number AWAEDC-3909350. (Attachments: # <u>1</u> Appendix Form 6)(Warring, Carl) (Entered: 11/01/2021)
11/01/2021	<u>38</u>	NOTICE OF INTERLOCUTORY APPEAL by Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, and Washington State Criminal Justice Training Commission. <b>9CCA Case No. 21-35912</b> (Attachments: # <u>1</u>

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		Representation Statement)(LMR, Case Administrator) Modified on 11/2/2021 to add 9CCA Case No. (AY, Case Administrator). (Entered: 11/01/2021)
11/01/2021	<u>39</u>	9CCA Payment Notification form re <u>38</u> Notice of Interlocutory Appeal. Received \$505, receipt number AWAEDC-3909350. (LMR, Case Administrator) (Entered: 11/01/2021)
11/01/2021	<u>40</u>	Letter from Appeal Deputy Clerk to Carl Perry Warring dated 11/1/2021. (Attachments: # <u>1</u> Notice of Appeal, # <u>2</u> Docket Sheet)(LMR, Case Administrator) (Entered: 11/01/2021)
11/02/2021	<u>41</u>	9CCA Appeal Time Schedule and Case Number: 21-35912 for <u>38</u> Notice of Interlocutory Appeal filed by Washington State Criminal Justice Training Commission, Art Dollard, Rick Bowen, John Everly, City of Spokane, Todd Belitz, Jake Jensen, Sue Rahr. Opening Brief Due: 01/03/2022. Appellees Brief Due: 01/31/2022. Mediation Questionnaire Due: 11/09/2021. (AY, Case Administrator) (Entered: 11/02/2021)
11/17/2021	<u>42</u>	TEXT ORDER - Pending resolution of the appeal, the Court <b>STRIKES</b> the telephonic scheduling conference on November 30, 2021, status conference on January 21, 2022, pre-trial conference on May 3, 2022, and jury trial on May 16, 2022. All other deadlines are held in abeyance pending appeal. Counsel shall submit a joint status report to the Court once the appeal is resolved. Text entry; no PDF document will issue. This text-only entry constitutes the court order on the matter. Signed by Chief Judge Stanley A. Bastian.(LMR, Case Administrator) (Entered: 11/17/2021)
01/24/2022	<u>43</u>	NOTICE OF WITHDRAWAL AND SUBSTITUTION OF COUNSEL on behalf of Defendants Todd Belitz, Rick Bowen, City of Spokane, Art Dollard, John Everly, Jake Jensen, Sue Rahr, Washington State Criminal Justice Training Commission. Attorney Katherine McNulty is withdrawing. Taylor M Hennessey is substituted as counsel for Defendants. (Attorney Taylor M Hennessey added to party Todd Belitz(pty:dft), Attorney Taylor M Hennessey added to party Rick Bowen(pty:dft), Attorney Taylor M Hennessey added to party City of Spokane(pty:dft), Attorney Taylor M Hennessey added to party Art Dollard(pty:dft), Attorney Taylor M Hennessey added to party John Everly(pty:dft), Attorney Taylor M Hennessey added to party Jake Jensen(pty:dft), Attorney Taylor M Hennessey added to party Sue Rahr(pty:dft), Attorney Taylor M Hennessey added to party Washington State Criminal Justice Training Commission(pty:dft))(Hennessey, Taylor) (Entered: 01/24/2022)

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<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:20-cv-00250-SAB
<b>Billable Pages:</b>	10	<b>Cost:</b>	1.00

No. 21-35912

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JOHN J. CRUZ,

*Plaintiff-Respondent,*

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING  
COMMISSION, *et al.*,

*Defendant-Appellant.*

On Appeal from the United States District Court  
for the Eastern District of Washington at Spokane  
No. 2:20-cv-00250-SAB  
Hon. Stanley A Bastian

---

**RESPONDENT'S ANSWERING BRIEF**

---

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## INTRODUCTION

Plaintiff-Respondent John J. Cruz, a trainee law enforcement officer, was kicked out of Washington State's Basic Law Enforcement Academy (the "Academy") on the thinnest of grounds, after being systematically assaulted, singled out, and otherwise discriminated against during training. Appellants, who include the Washington State Criminal Justice Training Commission (the "Commission"), its Executive Director, the City of Spokane, and several officers of the Spokane Police Department who participated in the abuse of Mr. Cruz at the Academy, seek shelter behind an immunity statute which does not cover their misconduct. They argue that the Washington Legislature intended to vest in the Commission and its agents a breadth of immunity unprecedented in this country: the right, while on the job, to commit any act for any motive with complete impunity, civil and criminal. On Appellants' theory, these police officers could get away with any wrongdoing up to and including murder. Fortunately, Appellants misread the statute, which on its face merely grants them immunity for "official acts performed in the course of their duties" at the Academy. The District Court properly held that the statute does not let officers avoid liability for acts performed for their own, improper motives. This Court should uphold the District Court's decision.

## **ISSUE(S) PRESENTED**

Does RCW 43.101.390 immunize the Commission and anybody working at the Academy from liability for acts performed at the Academy no matter what their goals?

## **STATEMENT OF THE CASE**

The District Court considered most relevant the following facts (1-ER-21–22):

John Cruz began working as a police officer for the City of Republic in September 2016. Mr. Cruz is Hispanic and was frequently subjected to racist comments by colleagues and supervisors, including Deputy Austin Hershaw. Soon after he began serving the City of Republic, Officer Cruz reported Deputy Hershaw for sexual misconduct while on duty, sparking further animosity by Hershaw.

In January 2017, shortly before Cruz began his mandatory training at the Academy, Hershaw visited the Academy to pick up targets for a firearms training, and while there, may have complained to Assistant Commander John Everly and Officer Art Dollard about Cruz’s “false allegations” against him and asked them to retaliate against Cruz. When Cruz arrived at the Academy in February 2017, Dollard and Everly consistently singled him out for harsh treatment, including:

- Several false accusations of lying;

- Assaulting him with pepper spray under the guise of training—  
spraying him significantly more than the other trainees;
- Berating him and citing him for matters which were not enforced  
against other trainees, some of which were not rule violations at all.  
For instance, smiling during class, bringing his cell phone to class,  
sitting down due to a leg injury, and (with permission) seeing a  
physician for a training injury. 1-ER-195–97

This ill-treatment culminated in Cruz’s discharge from the Academy. A few weeks into training, in February 2017, Cruz received permission to have his young daughter and his girlfriend occasionally stay with him overnight. 1-ER-22. In May 2017, a few weeks before graduation, Everly and Commander Rick Bowen questioned Cruz about the overnight stays and Commander Everly made a determination that determined that Plaintiff was lying about his understanding of the authorization, and on that basis, dismissed Cruz on the ground of violation of the Academy’s integrity policy. *Id.* Notably, there was no finding that he had violated any policy about guests in the first place. 1-ER-200. Cruz’s appeal was denied by Appellant-Defendant Rahr, the Commission’s Executive Director, and having been definitively discharged from the Academy for a violation of the integrity policy, he was terminated from employment, ending his hopes of a law enforcement career. 1-ER-22.

Cruz filed a complaint in state court on May 5, 2020, alleging state and federal civil rights violations, tortious interference with business relations, and intentional infliction of emotional distress. 1-ER-191–223. Central to his claims, is the premise that Defendants’ discriminatory treatment of him was based on race and/or on retaliation for reporting a fellow officer’s (Hershaw’s) misconduct. The Defendants removed the case to federal court.

The Commission and its staff, and the City of Spokane which provided most of those staff, moved for summary judgment based on RCW 43.101.390(1). The District Court denied the motion, reasoning that RCW 43.101.390(1) did not extend to acts performed in the pursuit of a personal vendetta. The District Court denied the motion without prejudice to renewal after discovery.

### **SUMMARY OF THE ARGUMENT**

Consistent with the interpretation given by the Washington courts of record to phrases such as “official duties” in statutes regarding law-enforcement officers, RCW 43.101.390, when properly read, does not provide immunity for the Appellants’ alleged acts.

### **ARGUMENT**

At issue in this appeal is the interpretation of RCW 43.101.490:

The commission, its boards, and individuals acting on behalf of the commission and its boards are immune from suit in any civil or criminal action contesting or based upon proceedings or other official acts performed in the

course of their duties in the administration and enforcement of this chapter.<sup>1</sup>

Appellants mischaracterize the District Court’s interpretation as based on a disagreement with the policy of the Washington Legislature. Not so. But this Court may take into consideration how unlikely it is that the Legislature intended the policy endorsed by Appellants. The sovereign is presumptively immune, but in practice, the federal and state governments have preserved only a few well-established patches of immunity, all of which have limits. For instance, the immunity of law enforcement officers is only “qualified,” and does not shield them from liability for acts, even in the pursuit of their duties, which violate well-established public policy. *See, e.g., Malley v. Briggs*, 457 U.S. 335 (1986). It made sense for the Legislature to give the Commission and its agents immunity of a similar scope. But it seems unlikely that the Legislature intended to give the Commission and its agents vastly broader immunity than that enjoyed by any other government agent in the country.

For example, did the Legislature intend to give Academy instructors the right to commit murder under the guise of a training accident? The difference

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<sup>1</sup> As of July 25, 2021, the statute omits the words “its boards,” and adds a second section expressly specifying that immunity extends to actions arising from certification, suspension, or denial of certification of officers. RCW 43.101.490 (2021).

between murder and intentional assault with pepper spray is only one of degree.

The question for a court would remain the same: does the statute prevent a court from even considering the nature and intent of the act? Properly read, the statute is not so broad.

The language of the statute is indeed broad, and the Washington Court of Appeals did indeed hold that the statute grants immunity for negligent training accidents. *Ent v. Washington State Justice Training Comm’n*, 174 Wash. App. 615, 619, 301 P.3d 468 (2013). The *Ent* court did not, however, address intentional torts. In particular, it did not address intentional torts which were not “official acts performed in the course of their duties.”

The statute does not define that term and no court has addressed the question, but the Washington Supreme Court has interpreted a similar term, “official duties,” in other Washington statutes related to law enforcement, to exclude ‘frolics.’ Under RCW 10.95.020(1), “aggravated” murder includes the murder of a police officer “who was performing his or her official duties” at the time. The Washington Supreme Court rejected the argument that an officer then carrying out an illegal arrest, outside his jurisdiction, was beyond the scope of that statute, but the Court made clear that this would not be true if the officer intentionally exceeded bounds: “An officer, even if effecting an arrest without probable cause, may still be engaged in ‘official duties,’ **provided the officer is**

**not on a frolic of his or her own....** Cases in which an officer is engaged in a crime of violence upon a citizen are distinguishable from situations wherein an officer may **inadvertently** infringe upon some constitutional rights of a person.” *State v. Hoffman*, 116 Wash. 2d 51, 100, 804 P.2d 577, 603 (1991) (emphasis added). Similarly, RCW 9A.36.031(1)(g), which makes it a crime to assault a police officer who is “performing his or her official duties,” was interpreted to include “all aspects of a law enforcement officer's **good faith** performance of job-related duties, **excluding conduct occurring when the officer is on a frolic of his or her own.**” *State v. Mierz*, 127 Wash. 2d 460, 478–79, 901 P.2d 286, 295 (1995) (emphasis added) (defendant properly charged in absence of evidence of bad faith or frolic).<sup>2</sup>

A statute which, like the immunity statute here, involved no danger to the officer in question, was interpreted even more narrowly. Under RCW 91.76.020, it

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<sup>2</sup> These cases hearken back to the common-law doctrine that “the master is not liable when a servant steps aside from the master's business in order to effect some purpose of his or her own; a supervisor’s intentional actions directed toward a subordinate, occasioned solely by jealousy, hatred, or other ill feelings, are not, as a matter of law, within the scope of employment.” *Mason v. Kenyon Zero Storage*, 71 Wash. App. 5, 13, 856 P.2d 410, 415 (1993).



is a crime to “obstruct[] any law enforcement officer in the discharge of his or her **official powers or duties.**” (Emphasis added). The Washington Court of Appeals held that an arrest under that statute was unlawful, and suppressed the resulting evidence, where the “obstruction” consisted of resisting a pat-down during a purely speculative *Terry* stop, because “[a]n unlawful detention is by definition not part of lawful police duties.” *State v. Barnes*, 96 Wash. App. 217, 225, 978 P.2d 1131, 1136 (1999).

The similar language in RCW 43.101.390, “official acts performed in the course of their duties” should be interpreted consistently with those other Washington statutes related to law enforcement officers. Assistant Commander Everly and Officer Dollard, at least, were not performing official acts in the course of their duties, when they harassed, assaulted, humiliated, and ginned up a pretext to terminate Mr. Cruz for disloyalty to ‘the blue’ and/or racial animus. To the extent that Appellants take the position that retaliation against whistleblowers is an act on behalf of the Commission and in service of its certification role, a jury should be entitled to decide whether to credit such a position.

To be clear, the Commission itself remains vicariously liable for its agents’ retaliatory acts, under the reasoning of the United States Supreme Court in *Faragher v. City of Boca Raton*, 524 U.S. 775, 800–802, 118 S. Ct. 2275, 2290, 141 L. Ed. 2d 662 (1998): as a matter of fundamental fairness, even conduct

clearly outside the scope of employment, such as sexual harassment, may give rise to vicarious liability where the employer enabled the conduct, failed to guard against it, and failed to correct it when given the opportunity. For the same reason, the Defendant-Appellant City of Spokane, which was the actual employer of Officer Dollard, Deputy Commander Everly, and Officer Jensen, remains potentially vicariously liable. Moreover, the City of Spokane was not the Commission or working on behalf of the Commission, so RCW 43.101.390 provides no basis at all for dismissing claims against the City of Spokane.

Similarly, a jury could reasonably infer that Defendants-Appellants Jensen and Belitz, officers who assisted in the harassment campaign, Defendant-Appellant Bowen, Mr. Everly's direct supervisor who assisted in the kangaroo-court hearing by which Mr. Cruz was expelled, and Defendant-Appellant Rahr, the Executive Director of the Academy who rejected Mr. Cruz's appeal, were motivated by personal considerations, friendship for Everly and Dollard, rather than by any intent to serve the Commission's purposes. Therefore, the District Court rightly refused to dismiss them under this statute either, in advance of discovery.

## **CONCLUSION**

Because the District Court properly determined that material issues of fact remain as to immunity under RCW 43.100.390, this Court should uphold its decision.

Date: July 5, 2022,

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## STATEMENT OF RELATED CASES

There are no related cases.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 1,976 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using [insert name and version of word processing program] Times New Roman 14-point font.

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## CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION,  
ET AL,

Appellants,

v.

JOHN CRUZ,

Appellee.

---

ON APPEAL FROM THE  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

No. 20-CV-00250-SAB  
The Honorable Stanley Bastian  
United States District Court Judge

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**APPELLANTS' REPLY BRIEF**

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## I. INTRODUCTION

Washington law, both statutory and case law, is unequivocal: the Commission and individuals acting on its behalf are immune from suit for any state law claims for official acts performed in the course of their duties.<sup>1</sup> In this case, it is *undisputed* that every act attributed to Appellants arose out of training at the Basic Law Enforcement Academy. In fact, the list of alleged conduct in Appellants' opening brief comes directly from Cruz's own Complaint. Dkt. 16 pp. 18-19. There are no allegations against Appellants related to conduct that occurred outside of Cruz's training. None.

Finally, it is *undisputed* that every one of the individual Appellants was employed by the Commission and engaged in his or her responsibilities with the Commission when the complained of conduct occurred. It is likewise uncontroverted that, although officers from various law enforcement agencies are part of the Academy staff, the Washington Legislature required that the Commission would assume legal responsibility for all training conducted by the Commission.

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<sup>1</sup> Appellants did not seek dismissal of Cruz's 42 U.S.C. § 1983 claims, because state immunity does not apply to those claims. *See* ER-208-12 (Compl.), 125 (Mot. for Partial Summ. J.).

Nonetheless, Cruz invites this Court to ignore the unambiguous language of the statute, as well as case law interpreting it. Instead, he asks the Court impermissibly to speculate as to what the Washington Legislature intended, and, contrary to this Court’s precedent, to amend the statute outside of the legislative process.<sup>2</sup> This Court should decline to do so and should reverse the district court’s denial of partial summary judgment as to Cruz’s state law claims.

## II. ARGUMENT

Tellingly, Cruz offers no explanation for the Legislature’s choice to use the words “*any* civil or criminal action” in granting broad immunity. Instead, despite the Legislature not doing so, he asks this Court to create an exception that examines the alleged subjective intent of the individuals involved. To do so would render the Legislature’s use of the word “any” meaningless.

Further, despite the uncontroverted fact that every allegation against City of Spokane police officers arises out of their service as instructors and administrators with the Commission and Basic Law Enforcement Academy, Cruz ignores Wash. Rev. Code § 43.101.080(1) and (6). Those provisions expressly contemplate the Commission being staffed with officers from other agencies like the Spokane Police Department and explicitly provide that the

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<sup>2</sup> See *United States v. King*, 24 F.4th 1226, 1231 (9th Cir. 2022).

Commission “assume[s] legal, fiscal, and program responsibility for all training conducted by the commission.”<sup>3</sup>

Both the Appellants and their alleged conduct fall squarely within the scope of the immunity offered by Wash. Rev. Code § 43.101.390(1). This Court should ignore Cruz’s invitation to misinterpret an unambiguous statute, and should reverse the district court’s denial of partial summary judgment as to Cruz’s state law claims.

**A. The Complained About Acts Indisputably Fall Within the Scope of the Statutory Immunity**

The district court erred when it created an exception to the broad immunity statute when a plaintiff alleges a discriminatory motive. That interpretation is contrary to the plain language of the statute and the Washington case law interpreting it. In *Ent v. Washington State Criminal Justice Training Com’n*, 174 Wash. App. 615, 301 P.3d 468 (2013), the appellate court rejected Ent’s argument that even if a plain reading of Wash. Rev. Code § 43.101.390(1) supported the Commission’s blanket immunity from civil or criminal suits, the

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<sup>3</sup> By way of distinction, because they were not serving as part of the Commission or acting as its agents as part of Basic Law Enforcement Academy, the Office of the Attorney General does not represent the remaining defendants.

statute must nonetheless be interpreted narrowly. *Id.* at 618, 301 P.3d at 470.<sup>4</sup> The court disagreed, explaining, “Ent’s argument ignores the plain language” of the statute and finding “no ambiguity” in the statutory language. *Id.* at 615, 620, 301 P.3d at 470.

The plain and unambiguous language of the statute confers broad immunity to the conduct alleged here: conduct occurring in the course of Appellants’ official duties as instructors and administrators at the Academy. It is undisputed that the Legislature directed the Commission to oversee the certification of peace officers through mandatory training at the Academy. Wash. Rev. Code §§ 43.101.020(2), .080(1). *See also Ent*, 174 Wash. App. at 619, 301 P.3d at 470 (cadet training is clearly encompassed within the duties of the Commission). Further, there is *no* conduct that would constitute a frolic, i.e. acts occurring outside of Cruz’s training at the Academy.

Rather, Cruz’s allegations include being reprimanded for being out of uniform and for his cell phone going off during training, being questioned about an assignment, being instructed to demonstrate skills learned, the manner in

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<sup>4</sup> Procedurally, the *Ent* court found dismissal under CR 12(c) was proper in that the plaintiff could “prove no set of facts consistent with his complaint that entitles him to recovery.” 174 Wash. App. at 622, 301 P.3d 468.

which his pepper spray certification was administered, etc. Appellants' Opening Br. 18 (citing Cruz's Compl.). Because he cannot get around the fact that all of the conduct was performed in the course of Appellants' duties, Cruz alleges improper motive. However, Cruz's "argument ignores the plain language" of the statute that provides no exception for subjective intent. *See Ent*, 174 Wash. App. at 615, 301 P.3d 468.

Undeterred, and despite case law concluding that the statute is unambiguous, Cruz instead cites to multiple unrelated statutes that include the term "official acts" as a way to justify this Court creating an exception to immunity based on the actor's alleged motivation. However, relying on similar phrases in unrelated statutes when the statutes do not share the same subject matter is improper under both state and federal principles of statutory construction.

Washington courts have rejected litigants' attempts to import terms from unrelated statutes. "The principle of reading statutes *in pari material* applies where statutes relate to the same subject matter." *Hallauer v. Spectrum Properties, Inc.*, 143 Wash. 2d 126, 146, 18 P.3d 540, 550 (2001). The goal then is to read them together "as constituting a unified whole, to the end that a

harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.” *Id.* at 146, 18 P.3d at 550.

In *Auto Value Lease Plan, Inc. v. Am. Auto Lease Brokerage, Ltd.*, 57 Wash. App. 420, 423, 788 P.2d 601, 602-3 (1990), the appellant sought a basis for recovery by incorporating a term from one statute into another. The appellate court, however, held they were “not *in pari material*,” which would have allowed them to be read together. Because the purposes of the statutes were different, “there [was] no basis for inferring a legislative intent to import terms from one statutory scheme to the other.” *Id.* at 423, 788 P.2d at 603. *See also Graham v. State Bar Ass’n*, 86 Wash. 2d 624, 626, 548 P.2d 310 (1976) (holding that statute calling the bar association an “agency of the state” did not use “agency” in the same sense as in a separate unrelated statute regarding audits of state agencies).

When interpreting a state statute, federal courts look to state rules of statutory construction.<sup>5</sup> However, federal courts recognize the same principle. Rejecting an argument similar to the one advanced by Cruz, the U.S. Supreme Court refused to import an exception into a statute where the two involved statutes played different roles. “This might be a sensible construction of the two

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<sup>5</sup> *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 945 (9th Cir. 2013).



statutes if they were intended to serve the same function, but plainly they were not.” *Erlenbaugh v. United States*, 409 U.S. 239, 245 (1972) (comparing statute prohibiting interstate transportation of wagering paraphernalia with statute prohibiting use of any facility in interstate or foreign commerce with intent to carry on unlawful activity). “To introduce into § 1952 an exception . . . would carve a substantial slice from the intended coverage of the statute. This we will not do without an affirmative indication—which is lacking here—that Congress so intended.” 409 U.S. at 247.

That is, however, exactly what Cruz attempts here: in the absence of an affirmative indication by the Legislature, he asks the Court to import terms from statutes with entirely different subject matter. The statute at issue, Wash. Rev. Code 43.101.390, falls under Title 43 “State Government – Executive”; Chapter 101 “Criminal Justice Training Commission—Education And Training Standards Boards”; and Section 390 “Immunity of commission.” The stated purpose of the creation of the Commission is “to establish and administer standards and processes for certification, suspension, and decertification of peace officers and corrections officers.” Wash. Rev. Code 43.101.020(2). And, the purpose of Wash. Rev. Code 43.101.390 is to provide immunity from suit in any civil or criminal action.

On the other hand, the statutes Cruz cites define various crimes against law enforcement officers and the associated punishments. Appellee’s Br. 6-7 (citing Wash. Rev. Code §10.95.020 – “Capital Punishment—Aggravated First Degree Murder” (where the victim was a law enforcement officer “performing his or her official duties at the time of the act resulting in death. . .”); Wash. Rev. Code § 9A.36.031 (assault of a law enforcement officer “performing his or her official duties. . .”); Wash. Rev. Code § 9A.76.020 (obstruction of law enforcement officer discharging “official powers or duties”)).<sup>6</sup> The Legislature’s stated purpose for defining various crimes includes “forbid[ding] and prevent[ing] conduct . . . [and to] give fair warning of the nature of the conduct declared to constitute an offense.” Wash. Rev. Code 9A.04.020. The subject matter between the statutes cited by Cruz and Wash. Rev. Code 43.101.390 are clearly not *in pari material*. While they may include similar phrasing, importing definitions “might be a sensible construction of the two statutes if they were intended to serve the same function, but plainly they were not.” *See Erlenbaugh*, 409 U.S. at 245.

Likewise, Cruz’s argument that common law principles related to employment law cases should apply here to create an exception to immunity

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<sup>6</sup> The cases Cruz cites to interpret those statutes are similarly irrelevant.

fails. Appellee's Br. 7 n2. First, it is unsupported by authority. Moreover, it runs contrary to the "affirmative indication" the Legislature provided when it expressed its intent *not* to limit the "generality" of the statute's broad immunity. *See Erlenbaugh*, 409 U.S. at 247 (refusing to "carve a substantial slice from the intended coverage of the statute"); Wash. Rev. Code 43.101.390(2). Further, Cruz's argument carving out an exception where a plaintiff alleges improper motive would make the Legislature's the words "*any* civil or criminal action" superfluous. *See* Wash. Rev. Code 43.101.390(2).

Further, Cruz's citation to an inapposite Supreme Court case and use of hyperbole to recycle the same arguments that the *Ent* court already rejected are unavailing. *See* Appellee's Br. 5. First, without any analysis, Cruz cites to *Malley v. Briggs*, 457 U.S. 335 (1986), in support of his argument that the Washington Legislature cannot grant immunity from *state* law claims to law enforcement, but rather that immunity must be "qualified." *Malley*, however, does not stand for that proposition. The issue presented there was instead whether a defendant police officer was entitled to absolute instead of qualified immunity for a *federal* civil rights action brought under 42 U.S.C. § 1983. *Id.* at 340. *Malley* is therefore not relevant to the issue of statutory immunity for state law claims.

Next, like the plaintiff in *Ent*, Cruz “presents [the court] with a number of troubling scenarios that might occur if [it] interpret[s] Wash. Rev. Code § 43.101.390 to provide broad immunity” for grossly negligent or even knowing and wrongful conduct. *See Ent*, 174 Wash. App. at 621, 301 P.3d at 471; Appellee’s Br. 5. The *Ent* court, however, emphasized the inescapable conclusion that “even if these scenarios are very real, they result from a legislative policy choice.” *Id.* Affirming dismissal of the plaintiff’s claim, the *Ent* court admonished, “any challenge to the wisdom of such broad immunity is an issue to be taken to the legislature.” *Id.*

Thereafter, the Legislature *did* act; and, instead of limiting Wash. Rev. Code § 43.101.390’s broad immunity, it expressly *reaffirmed* it. In 2021, the Legislature amended the statute, making two changes – one that has no impact on this matter,<sup>7</sup> and the other endorsing the broad immunity of the Commission: “[W]ithout limiting the *generality* of the foregoing [immunity provided for in (1)] . . .” Wash. Rev. Code 43.101.390(2) (emphasis added)<sup>8</sup>.

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<sup>7</sup> *See* 2021 Wash. Sess. Laws 26 (striking the terms “its boards” and “and its boards” from Wash. Rev. Code 43.101.390(1)).

<sup>8</sup> This subsection provides immunity related to certification/recertification of officers: “(2) Without limiting the generality of the foregoing, the commission and individuals acting on behalf of the commission are immune from suit in any civil action based on the certification, denial of certification, suspension, or other action regarding decertification of peace officers, reserve officers, or corrections officers.”

When creating or amending law, “[t]he Legislature is presumed to know the existing state of the case law in those areas in which it is legislating [.]” *Price v. Kitsap Transit*, 125 Wash. 2d 456, 464, 868 P.2d 556, 560 (1994). There is no authority to support the contention that the Legislature intended to carve out an exemption to its broad grant of immunity based on an individual’s alleged motivation. Rather, case law and statutory law are clear that the Washington Legislature made the policy decision to provide broad immunity from *any* civil or criminal action.

The district court erred when, contrary to the unambiguous language of the statute and the case law interpreting it, the court created an exception to the broad immunity statute if a plaintiff alleges a discriminatory motive. Cruz’s claims all concern actions performed in the course of or related to training duties, and this Court should reverse the judgment of the district court and grant the motion for partial summary judgment as to Cruz’s state law claims.

**B. Appellants Fall within the Scope of Parties Covered by the Immunity Afforded by the Washington Legislature**

Cruz’s assertion that the Appellants are not entitled to immunity for his state law claims fails both factually and legally. At the outset, the majority of his argument on this point has nothing to do with *who* falls within the scope of immunity; rather, it is just a restatement of his previous contentions related to

improper motivation. *See* Appellee’s Br. 8-9 (*conduct* is allegedly outside the scope of employment).

Then, Cruz sidesteps the express language of the statute to argue that the Commission is vicariously liable for “its agents” conduct. Appellee’s Br. 8. That runs counter to (1) his own argument that individual defendants were not acting within the scope of their employment<sup>9</sup> and (2) the unambiguous language of the statute that provides immunity to *both* the Commission *and* individuals acting on its behalf. Wash. Rev. Code § 43.101.390(1).

Nonetheless, Cruz ignores the statute’s grant of immunity to both the employer and employees, and, without any explanation for how it would apply to his state law claim, cites *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), an employment discrimination claim brought under Title VII alleging a hostile work environment, to support his theory of vicarious liability.

Even if *Faragher* applied, Cruz does not cite to the record for *any* facts that would have supported vicarious liability. He offers no evidence that would support a finding that “the employer enabled the conduct, failed to guard against it, [or] failed to correct it when given the opportunity.” None. *See* Appellee’s Br. 9.

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<sup>9</sup> Appellee’s Br. 7 (arguing the officers were on a frolic).

Further, he does not allege *any* discrete conduct attributable to the City of Spokane; instead, he argues that the City was the “actual” employer of three of the individual defendants and therefore is vicariously liable. Appellee’s Br. 9. *But see* Appellee’s Br. 2, 3, 8, 9 (referring to the individual defendants by their *Commission* titles, e.g. Commander, Assistant Commander). Cruz has alleged, and it is undisputed, that at all times relevant to this lawsuit, all of the individual defendants were acting in their roles as administrators or instructors in conjunction with Basic Law Enforcement Academy. ER-193 (Compl.).

Finally, Cruz conspicuously fails to address Wash. Rev. Code § 43.101.080(1) and (6) that contemplate the Commission being staffed with officers from other agencies like the Spokane Police Department and explicitly provide that the Commission “assume[s] legal, fiscal, and program responsibility for all training conducted by the commission.” Appellants fall within the scope of immunity offered by Wash. Rev. Code § 43.101.080(1) and are entitled to judgment on Cruz’s state law claims as a matter of law.

### **III. CONCLUSION**

The actions underlying Cruz’s state law claims occurred during Academy training by the Commission and were done by individuals acting on the

Commission's behalf. As such, this Court should reverse the district court's denial of partial summary judgment and dismiss Cruz's state law claims.

RESPECTFULLY SUBMITTED this 26th day of July, 2022.

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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# NINTH CIRCUIT COURT OF APPEALS

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